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# THE GOVERNMENTS OF EUROPE

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# THE GOVERNMENTS OF EUROPE

BY

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New York
THE MACMILLAN COMPANY
1913

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Set up and electrotyped. Published February, 1913.
Reprinted July, December, 1913.

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GREENFIELD, MASS., U. S. A.

To My Father

# PREFACE

It is a matter of common observation that during the opening years of the twentieth century there has been, in many portions of the civilized world, a substantial quickening of interest in the principles and problems of human government. The United States is happily among those countries in which the phenomenon can be observed, and we have witnessed in recent times not only the organization of societies and the establishment of journals designed to foster research within the field, but also a notable multiplication and strengthening of courses in political science open to students in our colleges and universities, as well as the development of clubs, forums, extension courses, and other facilities for the increasing of political information and the stimulation of political thinking on the part of the people at large. It is the object of this book to promote the intelligent study of government by supplying working descriptions of the governmental systems of the various countries of western and central Europe as they have taken form and as they operate at the present day. Conceived and prepared primarily as a text for use in college courses, it is hoped none the less that the volume may prove of service to persons everywhere whose interest in the subject leads them to seek the sort of information which is here presented.

The content of the book has been determined, in the main, by three considerations. In the first place, it has been deemed desirable to afford a wide opportunity for the *comparative* study of political institutions, especially by reason of the familiar fact that the governmental system of a minor country may, and frequently does, exhibit elements of novelty and of importance not inferior to those to be observed in the political organization of a greater state. Hence there are included descriptions of the governments of the minor as well as of the major nations of western and central Europe; and the original purpose to attempt some treatment of the governments of the eastern nations has been abandoned, somewhat reluctantly, only because of the demands of space, and because it was felt that this portion of the projected work would perhaps meet no very serious need in the usual college courses. In the second place, it is believed that the intelligent

study of present-day governments must involve at all stages the taking into careful account of the historical origins and growth of these governments. Hence a considerable amount of space has been devoted to sketches of constitutional history, which, however, are in all instances so arranged that they may readily be omitted if their omission is deemed desirable. In the case of countries whose political system underwent a general reconstitution during the Revolutionary and Napoleonic era it has been thought not feasible to allude, even briefly, to historical developments prior to the later eighteenth century. In the third place, it has been considered desirable to include in the book some treatment of political parties and of the institutions of local administration.

Within a field so expansive it has been possible to undertake but an introduction to a majority of the subjects touched upon. In the foot-notes will be found references to books, documents, and periodical materials of widely varying types, and it is hoped that some of these may serve to guide student and reader to more intensive information.

The preparation of the book has been facilitated by the encouragement and the expert advice accorded me by a number of teachers of government in colleges and universities in various portions of the country. And I have had at all times the patient and discriminating assistance of my wife. For neither the plan nor the details of the work, however, can responsibility be attached to anyone save myself. I can only hope that amidst the multitude of facts, some elusive and many subject to constant change, which I have attempted here to set down, not many seriously vitiating errors may have escaped detection.

FREDERIC AUSTIN OGG.

CAMBRIDGE, MASSACHUSETTS,
January 10, 1913.

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# GOVERNMENTS OF EUROPE

## PART I.—GREAT BRITAIN

### CHAPTER I

### THE FOUNDATIONS OF THE CONSTITUTION

#### I. The Importance of Historical Background

**1. Political Pre-eminence of Great Britain.**—George III. is reported to have pronounced the English constitution the most perfect of human formations. One need hardly concur unreservedly in this dictum to be impressed with the propriety of beginning a survey of the governmental systems of modern Europe with an examination of the political principles, rules, and practices of contemporary Britain. The history of no other European nation, in the first place, exhibits a development of institutions so prolonged, so continuous, and so orderly. The governmental forms and agencies of no other state have been studied with larger interest or imitated with clearer effect. The public policy of no other organized body of men has been more influential in shaping the progress, social and economic as well as political, of the civilized world. For the American student, furthermore, the approach to the institutions of the European continent is likely to be rendered easier and more inviting if made by way of a body of institutions which lies at the root of much that is both American and continental. There are, it is true, not a few respects in which the governmental system of the United States to-day bears closer resemblance to that of France, Germany, Switzerland, or even Italy than to that of Great Britain. The relation, however, between the British and the American is one, in the main, of historical continuity, while that between the French or German and the American is one which arises largely from mere imitation or from accidental resemblance.

**2. The Continuity of Institutional History.**—No government can be studied adequately apart from the historical development which

has made it what it is; and this ordinarily means the tracing of origins and of changes which stretch through a prolonged period of time. Men have sometimes imagined that they were creating a governmental system *de novo*, and it occasionally happens, as in France in 1791 and in Portugal in 1911, that a régime is instituted which has little apparent connection with the past. History demonstrates, however, in the first place, that such a régime is apt to perpetuate more of the old than is at the time supposed and, in the second place, that unless it is connected vitally with the old, the chances of its achieving stability or permanence are inconsiderable. In Germany, for example, if the institutions of the Empire were essentially new in 1871, the governmental systems of the several federated states, and of the towns and local districts, exhibited numerous elements which in origin were mediæval. In France, if central institutions, and even the political arrangements of the department and of the arrondissement, do not antedate the Revolution, the commune, in which the everyday political activity of the average citizen runs its course, stands essentially as it was in the age of Louis XIV.

If the element of continuity is thus important in the political system of Germany, France, or Switzerland, in that of England it is fundamental. It is not too much to say that the most striking aspect of English constitutional history is the continual preservation, in the teeth of inevitable changes, of a preponderating proportion of institutions that reach far into the past. "The great difficulty which presses on the student of the English constitution, regarded as a set of legal rules," observes a learned commentator, "is that he can never dissociate himself from history. There is hardly a rule which has not a long past, or which can be understood without some consideration of the circumstances under which it first came into being." [1] It is the purpose of the present volume to describe European governments as they to-day exist and operate. It will be necessary in all cases, however, to accord some consideration to the origins and growth of the political organs and practices which may be described. In respect to Great Britain this can mean nothing less than a survey, brief as may be, of a thousand years of history.

## II. Anglo-Saxon Beginnings

The earliest form of the English constitution was that which existed during the centuries prior to the Norman Conquest. Political or-

[1] W. R. Anson, The Law and Custom of the Constitution (3d ed., Oxford, 1897), I., 13.

ganization among the Germanic invaders of Britain was of the most rudimentary sort, but the circumstances of the conquest and settlement of the island were such as to stimulate a considerable elaboration of governmental machinery and powers. From the point of view of subsequent institutional history the most important features of the Anglo-Saxon governmental system were kingship, the witenagemot, and the units of local administration—shire, hundred, borough, and township.[1]

**3. Kingship.**—The origins of Anglo-Saxon kingship are shrouded in obscurity, but it is certain that the king of later days was originally nothing more than the chieftain of a victorious war-band. During the course of the occupation of the conquered island many chieftains attained the dignity of kingship, but with the progress of political consolidation one after another of the royal lines was blotted out, old tribal kingdoms became mere administrative districts of larger kingdoms, and, eventually, in the ninth century, the whole of the occupied portions of the country were brought under the control of a single sovereign. Saxon kingship was elective, patriarchal, and, in respect to power, limited. Kings were elected by the important men sitting in council, and while the dignity was hereditary in a family supposedly descended from the gods, an immediate heir was not unlikely to be passed over in favor of a relative who was remoter but abler.[2] In both pagan and Christian times the royal office was invested with a pronouncedly sacred character. As early as 690 Ine was king "by God's grace." But the actual authority of the king was such as arose principally from the dignity of his office and from the personal influence of the individual monarch.[3] The king was primarily a war-leader. He was a law-giver, but his "dooms" were likely to be framed only in consultation with the wise men, and they pertained to little else than

[1] See G. B. Adams, The Origin of the English Constitution (New Haven, 1912), Chap. I. That the essentials of the English constitution of modern times, in respect to forms and machinery, are products of the feudalization of England which resulted from the Norman Conquest, and not survivals of Anglo-Saxon governmental arrangements, is the well-sustained thesis of this able study. That many important elements, however, were contributed by Anglo-Saxon statecraft is beyond dispute.

[2] Thus, in 871, the minor children of Ethelred I. were passed over in favor of Alfred, younger brother of the late king.

[3] The Anglo-Saxon king was "not the supreme law-giver of Roman ideas, nor the fountain of justice, nor the irresponsible leader, nor the sole and supreme politician, nor the one primary landowner; but the head of the race, the chosen representative of its identity, the successful leader of its enterprises, the guardian of its peace, the president of its assemblies; created by it, and, although empowered with a higher sanction in crowning and anointing, answerable to his people." W. Stubbs, Select Charters Illustrative of English Constitutional History (8th ed., Oxford, 1895), 12.

the preservation of the peace. He was supreme judge, and all crimes and breaches of the peace came to be looked upon as offenses against him; but he held no court and he had in practice little to do with the administration of justice. Over local affairs he had no direct control whatever.

**4. The Witenagemot.**—Associated with the king in the conduct of public business was the council of wise men, or witenagemot. The composition of this body, being determined in the main by the will of the individual monarch, varied widely from time to time. The persons most likely to be summoned were the members of the royal family, the greater ecclesiastics, the king's gesiths or thegns, the ealdormen who administered the shires, other leading officers of state and of the household, and the principal men who held land directly of the king. There were included no popularly elected representatives. As a rule, the witan was called together three or four times a year. Acting with the king, it made laws, imposed taxes, concluded treaties, appointed ealdormen and bishops, and occasionally heard cases not disposed of in the courts of the shire and hundred. It was the witan, furthermore, that elected the king; and since it could depose him, he was obliged to recognize a certain responsibility to it. "It has been a marked and important feature in our constitutional history," it is pointed out by Anson, "that the king has never, in theory, acted in matters of state without the counsel and consent of a body of advisers." [1]

**5. Township, Borough, and Hundred.**—By reason of their persistence, and their comparative changelessness from earliest times to the later nineteenth century, the utmost importance attaches to Anglo-Saxon arrangements respecting local government and administration. The smallest governmental unit was the township, comprising normally a village surrounded by arable lands, meadows, and woodland. The town-moot was a primary assembly of the freemen of the village, by which, under the presidency of a reeve, the affairs of the township were administered. A variation of the township was the burgh, or borough, whose population was apt to be larger and whose political independence was greater; but its arrangements for government approximated closely those of the ordinary township. A group of townships comprised a hundred. At the head of the hundred was a hundred-man, ordinarily elected, but not infrequently appointed by a great landowner or prelate to whom the lands of the hundred belonged. Assisting him was a council of twelve or more freemen. In

[1] Law and Custom of the Constitution, II., Pt. I., 7. Cf. W. Stubbs, Constitutional History of England, I., 127.

the hundred-moot was introduced the principle of representation, for to the meetings of that body came regularly the reeve, the parish priest, and four "best men" from each of the townships and boroughs comprised within the hundred. The hundred-moot met as often as once a month, and it had as its principal function the adjudication of disputes and the decision of cases, civil, criminal, and ecclesiastical.

**6. The Shire.**—Above the hundred was the shire. Originally, as a rule, the shires were regions occupied by small but independent tribes; eventually they became administrative districts of the united kingdom. At the head of the shire was an ealdorman, appointed by the king and witan, generally from the prominent men of the shire. Subordinate to him at first, but in time overshadowing him, was the shire-reeve, or sheriff, who was essentially a representative of the crown, sent to assume charge of the royal lands in the shire, to collect the king's revenue, and to receive the king's share of the fines imposed in the courts. Each shire had its moot, and by reason of the fact that the shires and bishoprics were usually co-terminous, the bishop sat with the ealdorman as joint president of this assemblage. In theory, at least, the shire-moot was a gathering of the freemen of the shire. It met, as a rule, twice a year, and to it were entitled to come all freemen, in person or by representation. It was within the competence of those who did not desire to attend to send as spokesmen their reeves or stewards; so that the body was likely to assume the character of a mixed primary and representative assembly. The shire-moot decided disputes pertaining to the ownership of land, tried suits for which a hearing could not be obtained in the court of the hundred, and exercised an incidental ecclesiastical jurisdiction.[1]

[1] The classic description of Anglo-Saxon political institutions is W. Stubbs, Constitutional History of England in its Origin and Development, 3 vols. (6th ed., Oxford, 1897), especially I., 74–182; but recent scholarship has supplemented and modified at many points the facts and views therein set forth. A useful account (though likewise subject to correction) is H. Taylor, The Origins and Growth of the English Constitution, 2 vols. (new ed., Boston, 1900), I., Bk. 1., Chaps. 3–5; and a repository of information is J. Ramsay, The Foundations of England, 2 vols. (London, 1898). A valuable sketch is A. B. White, The Making of the English Constitution, 449–1485 (New York, 1908), 16–62. A brilliant book is E. A. Freeman, The Growth of the English Constitution (4th ed., London, 1884); but by reason of Professor Freeman's over-emphasis of the perpetuation of Anglo-Saxon institutions in later times this work is to be used with caution. Political and institutional history is well set forth in T. Hodgkin, History of England to the Norman Conquest (London, 1906), and C. W. C. Oman, England before the Norman Conquest (London, 1910). A useful manual is H. M. Chadwick, Studies on Anglo-Saxon Institutions (Cambridge, 1905); and an admirable bibliography is C. Gross, The Sources and Literature of English History (London, 1900).

## III. The Norman-Plantagenet Period

At the coming of William the Conqueror, in 1066, two fundamental principles may be said to have been firmly fixed in the English political system. The first was that of thoroughgoing local self-government. The second was that of the obligation of the king, in all matters of first-rate importance, such as the laying of taxes and the making of laws, to seek the counsel and consent of some portion of his subjects. In the period which was inaugurated by the Conquest neither of these principles was entirely subverted, yet the Norman era stands out distinctly as one in which the powers of government were gathered in the hands of the king and of his immediate agents in a measure unknown at any earlier time. Building in so far as was possible upon foundations already laid, William was able so to manœuver the consequences of the Conquest as to throw the advantages all but wholly upon the side of the crown. Feudalism, land-tenure, military service, taxation, the church—to all was imparted, by force or by craft, such a bent that the will of the sovereign acquired the practical effect of law, and monarchy in England, traditionally weak, was brought to the verge of sheer absolutism.

**7. Extension of Centralized Control.**—In respect to the actual mechanism of government the principal achievement of the Norman-Plantagenet period was the overhauling and consolidation of the agencies of administration. Despite the fact that local institutions of Saxon origin were largely respected, so that they have continued to this day the most substantial Anglo-Saxon contribution to English polity, there was a notable linking-up of these hitherto largely disassociated institutions with the institutions of the central government. This was accomplished in part by the dissolution of the earldoms by which the monarchy had been menaced in later Saxon days, and in part by a tremendous increase of the power and importance of the sheriffs. It was accomplished still more largely, however, by the organization of two great departments of government—those of justice and finance—presided over by dignitaries of the royal household and manned by permanent staffs of expert officials. The department of justice comprised the Curia; that of finance, the Exchequer. At the head of the one was the Chancellor; at the head of the other, the Treasurer. The principal officials within the two comprised a single body of men, sitting now as *justitiarii*, or justices, and now as *barones* of the Exchequer. The profits and costs of asserting and administering justice and the incomings and outgoings of the Exchequer were but

different aspects of the same fundamental concerns of state.[1] The justices of the Curia who held court on circuit throughout the realm and the sheriffs who came up twice a year to render to the barons of the Exchequer an account of the sums due from the shires served as the real and tangible agencies through which the central and local governments were knit together. As will appear, it was from the Norman Curia that, in the course of time, there sprang immediately those diversified departments of administration whose heads comprise the actual executive of the British nation to-day.

**8. King and Great Council.**—Untrammelled by constitutional restrictions, the Conqueror and his earlier successors recognized such limitations only upon the royal authority as were imposed by powerful and turbulent subjects. Associated with the king, however, was from the first a body known as the *Commune Concilium*, the Common, or Great, Council. "Thrice a year," the Saxon Chronicle tells us, "King William wore his crown every year he was in England; at Easter he wore it at Winchester; at Pentecost, at Westminster; and at Christmas, at Gloucester; and at these times all the men of England were with him—archbishops, bishops and abbots, earls, thegns and knights." By the phrase "all the men of England" is to be understood only the great ecclesiastics, the principal officers of state, and the king's tenants-in-chief—in truth, only such of the more important of these as were summoned individually to the sovereign's presence. At least in theory, however, the Norman kings were accustomed to consult this gathering of magnates, very much as their predecessors had been accustomed to consult the witenagemot, upon all important questions of legislation, finance, and public policy. It may, indeed, be said that it is the development of this Council that comprises the central subject of English constitutional history; for, "out of it, directly or indirectly, by one process or another, have been evolved Parliament, the Cabinet, and the courts of law."[2]

**9. The Plantagenet Monarchy.**—During the century and a half following the death of the Conqueror the vigor of the monarchy varied enormously, but not until the days of King John can there be said to have been any loss of power or independence which amounted to more than a passing circumstance. In a charter granted at the beginning of his reign, in 1100, Henry I. confirmed the liberties of his subjects and promised to respect the laws of Edward the Confessor; but the new sovereign did not propose, and no one imagined that he intended to propose, to relax any of the essential and legitimate power which had

[1] Anson, Law and Custom of the Constitution, II., Pt. I., 11.
[2] W. Wilson, The State (rev. ed., Boston, 1903), 369.

been transmitted to him by his father and brother. The reign of Stephen (1135–1154) was an epoch of anarchy happily unparalleled in the history of the nation. During the course of it the royal authority sank to its lowest ebb since the days of the Danish incursions. But the able and wonderfully energetic Henry II. (1154–1189) recovered all that had been lost and added not a little of his own account. "Henry II.," it has been said, "found a nation wearied out with the miseries of anarchy, and the nation found in Henry II. a king with a passion for administration." [1] With the fundamental purpose of reducing all of his subjects to equality before an identical system of law, the great Plantagenet sovereign waged determined warfare upon both the rebellious nobility and the independent clergy. He was not entirely successful, especially in his conflict with the clergy; but he effectually prevented a reversion of the nation to feudal chaos, and he invested the king's law with a sanction which it had known hardly even in the days of the Conqueror. The reign of Henry II. has been declared, indeed, to "initiate the rule of law." [2] By reviving and placing upon a permanent basis the provincial visitations of the royal justices, for both judicial and fiscal purposes, and by extending in the local administration of justice and finance the principle of the jury, Henry contributed fundamentally to the development of the English Common Law, the jury, and the modern hierarchy of courts. By appointing as sheriffs lawyers or soldiers, rather than great barons, he fostered the influence of the central government in local affairs. By commuting military service for a money payment (*scutage*), and by a revival of the ancient militia system (the *fyrd*), he brought the control of the armed forces of the nation effectually under royal control. By the frequent summons of the Great Council and the systematic reference to it of business of moment he contributed to the importance of an institution through whose amplification a century later Parliament was destined to be brought into existence.

**10. The Great Charter, 1215.**—The period of Richard I. (1189–1199) was, in constitutional matters, a continuation of that of Henry II. Richard was absent from the kingdom throughout almost the whole of the reign, but under the guidance of officials trained by Henry the machinery of government operated substantially as before. Under John (1199–1216) came a breakdown, occasioned principally by the sovereign's persistence in evading certain limitations upon the royal authority which already had assumed the character of established rules of the constitution. One of these forbade that the king should impose

[1] Anson, Law and Custom of the Constitution, II., Pt. I., 13.
[2] Stubbs, Select Charters, 21.

fresh taxation except with the advice and consent of the Great Council. Another enjoined that a man should not be fined or otherwise despoiled of his property except in virtue of judicial sentence. These and other principles John habitually disregarded, with the consequence that in time he found himself without a party and driven to the alternative of deposition or acceptance of the guarantee of liberties which the barons, the Church, and the people were united in demanding of him. The upshot was the promulgation, June 15, 1215, of Magna Carta.

No instrument in the annals of any nation exceeds in importance the Great Charter. The whole of English constitutional history, once remarked Bishop Stubbs, is but one long commentary upon it. The significance of the Charter arises not simply from the fact that it was wrested from an unwilling sovereign by concerted action of the various orders of society (action such as in France and other continental countries never, in mediæval times, became possible), but principally from the remarkable summary which it embodies of the fundamental principles of English government in so far as those principles had ripened by the thirteenth century. The Charter contained little or nothing that was new. Its authors, the barons, sought merely to gather up within a reasonably brief document those principles and customs which the better kings of England had been wont to observe, but which in the evil days of Richard and John had been persistently evaded. There was no thought of a new form of government, or of a new code of laws, but rather of the redress of present and practical grievances. Not a new constitution, but good government in conformity with the old one, was the essential object. Naturally enough, therefore, the instrument was based, in most of its important provisions, upon the charter granted by Henry I. in 1100, even as that instrument was based, in the main, upon the righteous laws of Edward the Confessor. After like manner, the Charter of 1215 became, in its turn, the foundation to which reassertions of constitutional liberty in subsequent times were apt to return; and, under greater or lesser pressure, the Charter itself was "confirmed" by numerous sovereigns who proved themselves none too much disposed to observe its principles.

In effect the Charter was a treaty between the king and his dissatisfied subjects. It was essentially a feudal document, and the majority of its provisions relate primarily to the privileges and rights of the barons. None the less, it contains clauses that affected all classes of society, and it is especially noteworthy that the barons and clergy pledged themselves in it to extend to their dependents the same customs and liberties which they were themselves demanding of the crown. Taking the Charter as a whole, it guaranteed the freedom of

the Church, defined afresh and in precise terms surviving feudal incidents and customs, placed safeguards about the liberties of the boroughs, pledged security of property and of trade, and stipulated important regulations respecting government and law, notably that whenever the king should propose the assessment of scutages or of unusual aids he should take the advice of the General Council, composed of the tenants-in-chief summoned individually in the case of the greater ones and through the sheriffs in the case of those of lesser importance. Certain general clauses, e. g., that pledging that justice should neither be bought nor sold, and that prescribing that a freeman might not be imprisoned, outlawed, or dispossessed of his property save by the judgment of his peers or by the law of the land, meant in effect considerably less than they sometimes have been interpreted to mean.[1] Yet even they served to emphasize the fundamental principle upon which the political and legal structure was intended to be grounded, that, namely, of impartial and unvarying justice.[2]

[1] The term "peers," as here employed, means only equals in rank. The clause cited does not imply trial by jury. It comprises a guarantee simply that the barons should not be judged by persons whose feudal rank was inferior to their own. Jury trial was increasingly common in the thirteenth century, but it was not guaranteed in the Great Charter.

[2] Good accounts of the institutional aspects of the Norman-Angevin period are Stubbs, Constitutional History, I., 315–682, II., 1–164; Taylor, Origin and Growth of the English Constitution, I., Bk. 2, Chaps. 2–3; Adams, The Origin of the English Constitution, Chaps. 1–4; and White, Making of the English Constitution, 73–119. Two excellent little books are Stubbs, Early Plantagenets (London, 1876) and Mrs. J. R. Green, Henry II. (London, 1892). General accounts will be found in T. F. Tout, History of England from the Accession of Henry III. to the Death of Edward III., 1216–1377 (London, 1905), and H. W. C. Davis, England under the Normans and the Angevins (London, 1904). A monumental treatise, though one which requires a considerable amount of correction, is E. A. Freeman, History of the Norman Conquest, 6 vols. (Oxford, 1867–69), and a useful sketch is Freeman, Short History of the Norman Conquest (3d ed., Oxford, 1901). Among extended and more technical works may be mentioned: F. Pollock and F. W. Maitland, History of English Law, 2 vols. (2d ed., Cambridge, 1898), which, as a study of legal history and doctrines, supersedes all earlier works; F. W. Maitland, Domesday Book and Beyond (Cambridge, 1897); J. H. Round, Feudal England (London, 1895); K. Norgate, England under the Angevin Kings, 2 vols. (London, 1887); ibid., John Lackland (London, 1902), and J. H. Ramsay, The Angevin Empire (London, 1903). The text of the Great Charter is printed in Stubbs, Select Charters, 296–306. English versions may be found in G. B. Adams and H. M. Stephens, Select Documents of English Constitutional History (New York, 1906), 42–52; S. Amos, Primer of the English Constitution and Government (London, 1895), 189–201; and University of Pennsylvania Translations and Reprints (translation by E. P. Cheyney), I., No. 6. The principal special work on the subject is W. S. McKechnie, Magna Carta; a Commentary on the Great Charter of King John (Glasgow, 1905). An illuminating commentary is contained in Adams. Origin of the English Constitution, 207–313.

## IV. The Rise of Parliament

**11. Beginnings of the Representative Principle.**—The thirteenth century was clearly one of the most important periods in the growth of the English constitution. It was marked not merely by the contest which culminated in the grant of the Great Charter but also by the beginnings, in its essentials, of Parliament. The formative epoch in the history of Parliament may be said to have been, more precisely, the second half of the reign of Henry III. (1216–1272), together with the reign of the legislator-king Edward I. (1272–1307). The creation of Parliament as we know it came about through the signal enlargement of the Norman-Plantagenet Great Council by the introduction of representative elements, followed by the splitting of the heterogeneous mass of members definitely into two co-ordinate chambers. The representative principle was in England no new thing in the thirteenth century. As has appeared, there were important manifestations of it in the local governmental system of Anglo-Saxon times. As brought to bear in the development of Parliament, however, the principle is generally understood to have sprung from the twelfth-century practice of electing assessors to fix the value of real and personal property for purposes of taxation, and of jurors to present criminal matters before the king's justices. Thus, Henry II.'s Saladin Tithe of 1188—the first national imposition upon incomes and movable property—was assessed, at least in part, by juries of neighbors elected by, and in a sense representative of, the taxpayers of the various parishes. By the opening of the thirteenth century the idea was fast taking hold upon the minds of Englishmen, not only that the taxpayer ought to have a voice in the levying of taxes, but that between representation and taxation there was a certain natural and inevitable connection. In the Great Charter, as has been stated, it was stipulated that in the assessment of scutages and of all save the three commonly recognized feudal aids the king should seek the advice of the General Council. The General Council of the earlier thirteenth century was not regularly a representative body, but it was not beyond the range of possibility to impart to it a representative character, and in point of fact that is precisely what was done. To facilitate the process of taxation it was found expedient by the central authorities to carry over into the domain of national affairs that principle of popular representation which already was doing approved service within the sphere of local justice and finance, and from this adaptation arose, step by step, the conversion of the old gathering of feudal magnates into a national parliamentary assembly.

**12. Early Parliaments.**—The means by which the transformation was accomplished consisted in the first instance, as has been said, in the introduction into the Council of new and representative elements. The earliest step in this direction was taken in 1213, when King John, harassed by fiscal and political difficulties, addressed to the sheriffs a series of writs commanding that four discreet knights from every county be sent to participate in a deliberative council to be held at Oxford. The practice took root slowly. In 1254 Henry III., in sore need of money for the prosecution of his wars in Gascony, required of the sheriffs that two knights be sent from each county to confer with the barons and clergy relative to the subsidies which should be accorded the crown. The desired vote of supplies was refused and the long-brewing contest between the king and the barons broke in civil war. But during the struggle that ensued the foundations of Parliament were still more securely laid. Following the king's defeat at Lewes, in 1264, Simon de Montfort, leader of the barons, convened a parliament composed of not only barons and clergy but also four knights from each shire, and at London during the following year, he caused again to be assembled, in addition to five earls, eighteen barons, and a large body of clergy, two knights from each of the several shires and two burgesses from each of twenty-one towns known to be friendly to the barons' cause. These proceedings were essentially revolutionary and unauthorized. Even the gathering of 1265, as Stubbs remarks, presented the appearance largely of a party convention, and there is no evidence that its author intended such a body to be regularly or frequently summoned, or even summoned a second time at all. None the less, now for the first time representatives of the towns were brought into political co-operation with the barons, clergy, and knights; and the circumstance was filled with promise. During the ensuing thirty years there were several "parliaments," although the extent to which knights and burgesses participated in them is uncertain. The period was one of experimentation. In 1273 four knights from each shire and four citizens from each town joined the magnates in taking the oath of fealty to the new and absent sovereign, Edward I. The First Statute of Westminster, in 1275, declares itself to have been adopted with the assent of the "commonalty of the realm." In 1283 a parliament was held which almost precisely duplicated that of 1265. In 1290, and again in 1294, there was one, in which, however, representation of the towns was omitted.

The gathering which served to fix the type for all time to come was Edward I.'s so-called Model Parliament of 1295. To this parliament the king summoned severally the two archbishops, all of the bishops,

the greater abbots, and the more important earls and barons; while every sheriff was enjoined to see that two knights were chosen from each shire, two citizens from each city, and two burgesses from each borough. Each bishop was authorized, furthermore, to bring with him his prior or the dean of the cathedral chapter, the archdeacons of his diocese, one proctor or agent for his cathedral chapter, and two of his diocesan clergy. In the parliament as actually convened there were 2 archbishops, 18 bishops with their lesser clergy, 66 abbots, 3 heads of religious orders, 9 earls, 41 barons, 63 knights of the shire, and 172 representatives of the cities and boroughs—an aggregate of approximately 400 persons. There were thus present in the assemblage, in person or by deputy, all of the constituent orders of English society, and the irregular device of Simon de Montfort was vested at last with the character of legality. After Edward I. Parliament may be said to have been an established institution of the realm. Its meetings long continued intermittent and infrequent, and its powers from time to time varied enormously, but the place which it filled in the economy of the nation grew ever more important.

**13. Establishment of the Bicameral System.**—Like its counterpart in France, the Estates-General, the English Parliament comprised the three great estates or orders—nobility, clergy, and commons—of which, aside from the peasantry, mediæval society in all western European countries was composed. In the working out of its internal structure, however, two chambers resulted, rather than, as in France, three. Originally the three estates sat separately. Their primary business was the voting of supplies and, the principle being that a tax ought to be conceded by those who would be called upon to pay it, the natural course was for the lords to grant their scutages and aids, the commoners their tenths and fifteenths, and the clergy their subsidies, apart. Indeed there is reason to believe that at times even the knights and the burgesses deliberated separately. Gradually, however, there appeared certain affiliations of interest which operated to modify the original practice. In the first place, the lesser clergy, inconvenienced by attendance and preferring to vote their contributions in the special ecclesiastical assemblages known as the convocations of Canterbury and York, contrived to throw off entirely their obligation of membership. The greater clergy and the greater barons, in the next place, developed sufficiently large interests in common to be amalgamated with ease in one body. Similarly, the lesser barons found their interests essentially identical with those of the country freeholders, represented by the knights of the shire, and with those of the burgesses. The upshot was a gradual alignment of the aggregate

membership in two great groups, the one of which became historically the House of Lords, the other the House of Commons. At the beginning of the reign of Edward III. (1327–1377) the three estates still sat separately, but before the close of this period the bicameral arrangement seems definitely to have been established. There is no evidence that at any stage of their history the three groups ever sat as a single body. It need hardly be emphasized that the entire course of English history since the fourteenth century has been affected profoundly by the fact that the national assembly took the form of two houses rather than of one, as did the Scotch, of three as did the French, or of four as did the Swedish. But for the withdrawal of the lesser clergy, the number might very possibly have been three.

**14. Powers of Finance and Legislation.**—Structurally, the English Parliament is a creation of the Middle Ages; politically, it is a product of modern times, and, in no small measure, of the past hundred years. Before the close of the Middle Ages, however, it had acquired a sum total of authority which at least gave promise of its development into a great co-ordinate, if not a preponderating, power in the state. In the first place, it had forced the establishment of the twin principles of public finance (1) that the right to levy taxes of every sort lay within its hands and (2) that the crown might impose no direct tax without its assent, nor any indirect tax save such as might be justified under the customs recognized in Magna Carta. When Edward I. confirmed the Charter, in 1297, he agreed that no tallages or aids should thereafter be taken without the assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land. A statute of 1340 reiterated the principle still more specifically. In 1395 appeared the formula employed to this day in the making of parliamentary grants, "by the Commons with the advice and assent of the Lords Spiritual and Temporal." And in 1407 Henry IV. extended the royal approval to the principle that money grants should be initiated in the Commons, assented to by the Lords, and only thereafter reported to the king. For the ancient theory of taxation by estates was substituted, slowly but inevitably, the modern doctrine of the fiscal pre-eminence of the Commons.

The second point at which Parliament made decisive advance before the close of the mediæval period was in respect to powers of ordinary legislation. Originally, Parliament was not conceived of as, in the strict sense, a law-making body at all. The magnates who composed the General Council had exercised the right to advise the crown in legislative matters, and their successors in Parliament continued to do the same, but the commoners who in the thirteenth cen-

tury were brought in were present, in theory, for fiscal rather than legislative purposes. The distinction, however, was difficult to maintain, and with the continued growth of the parliamentary body the legislative character was recognized eventually to be inherent in the whole of it. At the opening of the fourteenth century laws were made, technically, *by* the king with the *assent* of the magnates at the *request* of the commoners. The knights and burgesses were recognized as petitioners for laws, rather than as legislators. They could ask for the enactment of a statute, or for a clearer definition of law, but it was for the king and his councillors to determine finally whether legislation was required and what form it should assume. Even when a law which was requested was promised it not infrequently happened that the intent of the Commons was thwarted, for the text of the measure was not drawn up, normally, until after the parliament was dissolved, both form and content were determined arbitrarily by the crown and council, and between petition and statute there might be, and often was, gross discrepancy.

**15. Development of the Legislative Process.**—By a memorable statute of 1322, in the reign of Edward II., it was stipulated that "the matters which are to be established for the estate of our lord the king and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded, and established in parliaments, by our lord the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm; according as it hath been before accustomed." [1] This declaration is understood to have established, not only the essentially legislative character of Parliament, but the legislative parity of the commoners with the magnates. It remained, however, to substitute for the right of petition the right of legislating by bill. Throughout the fourteenth century Parliament, and especially the Commons, pressed for an explicit recognition of the principle that the statute in its final form should be identical with the petition upon which it was based. In 1414 Henry V. granted that "from henceforth nothing be enacted to the petitions of his commons that be contrary to their asking, whereby they should be bound without their assent." [2] The promise tended in practice to be evaded, and late in the reign of Henry VI. there was brought about an alteration of procedure in accordance with which measures were henceforth to be introduced in either house, in the form of drafted bills. The legislative process was now essentially reversed. The right of initiative was secured to the Commons, concurrently with the Lords; the crown was restricted to a right of veto

[1] Adams and Stephens, Select Documents, 97.

[2] Ibid., 182.

or assent. The change in procedure was reflected in a change of formula. Statutes began to be made "by the King's most excellent majesty by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same." And these words comprise the formula with which every act of Parliament to-day begins. Technically, the laws were, and are still, made by the crown; practically Parliament, once merely a petitioning and advising body, had become a full-fledged legislative assemblage.

Throughout the later fourteenth and earlier fifteenth centuries the growth of Parliament in self-assertiveness was remarkable. Twice during the fourteenth century, in 1327 and in 1399, it exercised the fundamental prerogative of deposing the sovereign and of bestowing the crown upon a successor.[1] And before the close of the Lancastrian era it had assumed advanced ground in demanding the right of appropriating (as well as of voting) subsidies, the accounting by the public authorities for moneys expended, the removal of objectionable ministers, and the annual assembling of the two houses. During the civil wars of the second half of the fifteenth century parliamentary aggressiveness and influence materially declined, and at the opening of the Tudor period, in 1485, the body was in by no means the favorable position it had occupied fifty years earlier. As will appear, its eclipse continued largely through the epoch of the Tudors. Yet its broader aspects had been permanently fixed and its perpetuation in the constitutional system positively assured.[2]

## V. Administrative and Judicial Development

**16. The Permanent Council.**—One line, thus, along which were laid the foundations of the English governmental system of to-day comprised the transformation of the Norman Great Council into the semi-aristocratic, semi-democratic assemblage known as Parliament.

[1] Strictly, upon the first of these occasions the sovereign, Edward II., was driven by threat of deposition to abdicate.

[2] On the rise of Parliament see Stubbs, Constitutional History of England, II., Chaps. 15, 17; Taylor, Origins and Growth of the English Constitution, I., 428–616; G. B. Smith, History of the English Parliament, 2 vols. (London, 1892), I., Bks. 2–4; White, Making of the English Constitution, 298–401; D. J. Medley, Students' Manual of English Constitutional History (2d ed., Oxford, 1898), 127–150; Tout, History of England from the Accession of Henry III. to the Death of Edward III., Chaps. 5, 6, 10. Valuable biographical treatises are G. W. Prothero, Life of Simon de Montfort (London, 1877); E. Jenks, Edward Plantagenet [Edward I.] the English Justinian (New York, 1902); and T. F. Tout, Edward the First (London, 1906).

A parallel line was the development from the Great Council of a body designated after the thirteenth century as the Permanent, after the fifteenth as the Privy, Council, and likewise of the four principal courts of law. By a very gradual process those members of the original Council who were attached in some immediate manner to the court or to the administrative system acquired a status which was different from that of their colleagues. The Great Council met irregularly and infrequently. So likewise did Parliament. But the services of the court and the business of government must go on continuously, and for the care of these things there grew up a body which at first comprised essentially a standing commission, an inner circle, of the Council, but which in time acquired a virtually independent position and was designated, for purposes of distinction, as the Permanent Council. The composition of this body varied from time to time. Certain functionaries were included regularly, while the remaining members owed their places to special summons of the crown. Its powers were enormous, being at the same time administrative, judicial, and financial, and the mass of business to which it was required to give attention was increasingly great.

**17. The Courts of Law.**—Three things resulted. In the first place, the Permanent Council acquired, in practice, complete detachment from the older and larger body. In the second place, to facilitate the accomplishment of its work there were introduced into it trained lawyers, expert financiers, and men of other sorts of special aptitudes—men, often, who in rank were but commoners. Finally, there split off from the body a succession of committees, to each of which was assigned a particular branch of administrative or judicial business. In this manner arose the four great courts of law: (1) the Court of Exchequer, to which was consigned jurisdiction over all fiscal causes in which the crown was directly concerned; (2) the Court of Common Pleas, with jurisdiction over civil cases between subject and subject; (3) the Court of King's Bench, presided over nominally by the king himself and taking cognizance of a variety of cases for which other provision was not made; and (4) the Court of Chancery, which, under the presidency of the Chancellor, heard and decided cases involving the principles of equity. The differentiation of these tribunals, beginning in the early twelfth century, was completed by the middle of the fourteenth. Technically, all were co-ordinate courts, from which appeal lay to the King in Council; and of the judicial prerogative which the Council as a whole thus retained there are still, as will be pointed out, certain survivals. By the time of Henry VI. (1422–1461) the enlargement of membership and the specialization of functions of the

Permanent Council had progressed so far that the Council had ceased entirely to be a working unit. In the end what happened was that, precisely as the Permanent Council had been derived by selection from the original Great Council, so from the overgrown Permanent Council was constituted, in the fifteenth century, a smaller and more compact administrative body to which was assigned the designation of "Privy Council." [1]

## VI. The Tudor Monarchy

**18. Popular Absolutism.**—The salient fact of the Tudor period of English history (1485–1603) is the vigor and dominance of the monarchy. From the Wars of the Roses the nation emerged in need, above all other things, of discipline and repose. It was the part of the Tudors to enforce relentlessly the one and to foster systematically the other. The period was one in which aristocratic turbulence was repressed, extraordinary tribunals were erected to bring to justice powerful offenders, vagrancy was punished, labor was found for the unemployed, trade was stimulated, the navy was organized on a permanent basis, the diffusion of wealth and of education was encouraged, the growth of a strong middle class was promoted—in short, one in which out of chaos was brought order and out of weakness strength. These things were the work of a government which was strongly paternal, even sheerly despotic, and, for a time at least, the evolution of parliamentary machinery was utterly arrested. But it should be observed that the question in sixteenth-century England was not between strong monarchy on the one hand and parliamentary government on the other. The alternatives were, rather, strong monarchy and baronial anarchy. This the nation clearly perceived, and, of the two, it much preferred the former.

"The Tudor monarchy," says an English scholar, "unlike most other despotisms, did not depend on gold or force, on the possession of vast estates, unlimited taxation, or a standing army. It rested on the willing support of the nation at large, a support due to the deeply-rooted conviction that a strong executive was necessary to the national unity, and that, in the face of the dangers which threatened the country both at home and abroad, the sovereign must be allowed a free hand. It was this conviction, instinctively felt rather than definitely realized, which enabled Henry VIII. not only to crush open

[1] Stubbs, Constitutional History, II., Chap. 13; White, Making of the English Constitution, 123–251; Adams, Origin of the English Constitution, 136–143; W. S. Holdsworth, History of English Law, 3 vols. (London, 1903–1909), I., 1–169.

rebellion but to punish the slightest signs of opposition to his will, to regulate the consciences of his subjects, and to extend the legal conception of treason to limits hitherto unknown. It was this which rendered it possible for the ministers of Edward VI. to impose a Protestant régime upon a Romanist majority, and allowed Mary to enter upon a hateful marriage and to drag the country into a disastrous war. It was this, finally, which enabled Elizabeth to choose her own line in domestic and foreign policy, to defer for thirty years the war with Spain, and to resist, almost single-handed, the pressure for further ecclesiastical change. The Tudor monarchy was essentially a national monarchy. It was popular with the multitude, and it was actively supported by the influential classes, the nobility, the gentry, the lawyers, the merchants, who sat as members of Parliament at Westminster, mustered the forces of the shire as Lords-Lieutenant, or bore the burden of local government as borough magistrates and justices of the peace." [1]

**19. The Privy Council.**—The times of the Tudors and of the early Stuarts have been designated with aptness the period of "government by council." Parliament continued to exercise a certain control over legislation and taxation, but it was in and through the Privy Council, together with certain subordinate councils, that the absolute monarchy, in the main, performed its work. The Privy Council—or simply "the Council"—comprised ordinarily about seventeen or eighteen persons, although under Henry VIII. its membership at one time approached forty. The councillors were almost invariably members of one or the other of the two houses of Parliament, an arrangement by which was facilitated the control of the proceedings of that body by the Government, but which did not yet involve any recognized responsibility of the executive to the legislative branch. After Queen Mary the councillors were, with few exceptions, laymen. Technically, the function of the Council was only advisory, but in practice even those sovereigns, as Henry VIII. and Elizabeth, who were most vigilant and industrious, were obliged to allow to the councillors large discretion in the conduct of public business, and under the early Stuarts the Council very nearly ruled the realm. Representing at all times the sovereign, who was supposed invariably to be present at its deliberations, the Council supervised the work of administration, regulated trade, granted licenses, controlled the press, kept an eye on the law courts, ferreted out plots, took measures to suppress rebellion, controlled the movements of the fleet, assisted in the management of

[1] G. W. Prothero, Select Statutes and other Constitutional Documents Illustrative of the Reigns of Elizabeth and James I. (Oxford, 1898), xvii–xviii.

ecclesiastical affairs, and, in short, considered and took action upon substantially all concerns of state. By virtue of its right to issue orders or ordinances it possessed a power that was semi-legislative; through its regulation of trade, its management of loans and benevolences, and its determination of military obligations, it participated actively in the control of taxation; and, under the presidency of the crown, it possessed the functions of a supreme tribunal, whose jurisdiction, in part original and in part appellate, was widespread and peculiarly despotic.[1]

**20. Other Councils: The Star Chamber.**—In 1487 there was created a special tribunal, consisting at the outset of seven great officials and members of the Council, including two judges, to take special cognizance of cases involving breaches of the law by offenders who were too powerful to be reached under the operation of the ordinary courts. This was the tribunal subsequently known, from its meeting-place, as the Court of Star Chamber. In effect it was from the beginning a committee of the Privy Council, empowered to exercise a jurisdiction which in truth had long been exercised extra-legally by the Council as a whole. The relation of the two institutions inclined in practice to become ever closer, and by the middle of the sixteenth century the Star Chamber had been enlarged to include all of the members of the Council, together with the two chief justices; and since the Star Chamber possessed a statutory sanction which the Council lacked, the judicial business of the older body was despatched regularly by its members sitting under the guise of the newer one. The tendency of the Tudor régime toward the conciliar type of government is manifested further by the creation of numerous subsidiary councils and courts whose history cannot be recounted here. Most of these were brought into existence during the reign of Henry VIII. Those of principal importance were (1) the Council of the North, set up in 1539; (2) the Council of Wales, confirmed by statute of 1542; (3) the Court of Castle Chamber, reproducing in Ireland the principal features of the English Star Chamber; (4) the Courts of Augmentation, First Fruits and Annates, and Wards; and (5) the Elizabethan Court of High Commission.[2]

[1] Prothero, Statutes and Constitutional Documents, cii. See A. V. Dicey, The Privy Council (London, 1887); E. Percy, The Privy Council under the Tudors (Oxford, 1907).

[2] A. T. Carter, Outlines of English Legal History (London, 1899), Chap. 12; A. Todd, Parliamentary Government in England, ed. by S. Walpole, 2 vols. (London, 1892), I., Chap. 2; Dicey, The Privy Council, 94–115.

## VII. Parliament under the Tudors

**21. Control by the Crown.**—By the Tudors generally, and especially Henry VIII. and Elizabeth, Parliament was regarded as a tool to be used by the crown, rather than as in any sense an independent, co-ordinate power in the state. When innovations were to be introduced, such as those carried through by Henry VIII., it was Tudor policy to clothe them with the vestments of parliamentarism, to the end that they might be given the appearance and the sanction of popular measures; and when subsidies were to be obtained, it was recognized to be expedient to impart to them, in similar manner, the semblance of voluntary gifts on the part of the nation. It was no part of Tudor intent, however, that Parliament should be permitted to initiate measures, or even to exercise any actual discretion in the adoption, amendment, or rejection of proposals submitted by the Government. There were several means by which the crown contrived to impede the rise of Parliament above the subordinate position which that body occupied at the accession of Henry VII. One was the practice of convening Parliament irregularly and infrequently and of bringing its sessions to an early close. Another, employed especially during Thomas Cromwell's ministry under Henry VIII. and during the reign of Elizabeth, was that of tampering with the freedom of borough and county elections. A third was the habit, also notorious under Henry VIII. and Elizabeth, of dictating and directing in all that was essential in the proceedings of the chambers. Henry VIII. bullied his parliaments systematically; Elizabeth, by cajolery, flattery, deceit, and other arts of which she was mistress, attained through less boisterous methods the same general end. Measures were thrust upon the chambers accompanied by peremptory demand for their enactment; objectionable projects originated by private members were stifled; and the fundamental parliamentary privileges of free speech, freedom from arrest, and access to the sovereign were arbitrarily suspended or otherwise flagrantly violated.

**22. The Independence of the Crown.**—Finally must be mentioned certain devices by which the crown was enabled to evade limitations theoretically imposed by Parliament's recognized authority. One of these was the issuing of proclamations. In the sixteenth century it was generally maintained that the sovereign, acting alone or with the advice of the Council, could issue proclamations controlling the liberty of the subject, so long as such edicts did not violate statute or common law. As a corollary, it was maintained also that the crown

could dispense with the action of law in individual cases and at times of crisis. The range covered by these prerogatives was broad and undefined, and in the hands of an aggressive monarch they constituted a serious invasion of the powers of legislation nominally vested in Parliament. It is true that the act of 1539 imparting to royal proclamations the force of law was repealed in 1547; but proclamations continued, especially under Elizabeth and James I., not only to be numerous, but to be enforced relentlessly by penalties inflicted through the Star Chamber. The most important power of Parliament in the sixteenth century was still that of voting supplies. But in respect to finance, as in respect to legislation, the crown possessed effective means of evading parliamentary control. In the first place, the sovereign possessed large revenues, arising from crown lands, feudal rights, profits of jurisdiction, and ecclesiastical payments, with which Parliament had nothing whatever to do. In the second place, the great indirect taxes—customs duties and tonnage and poundage—were, in the sixteenth century, voted at the accession of a sovereign for the whole of the reign. It was only in respect to extraordinary taxes—"subsidies" and "tenths and fifteenths"—that Parliament was in a position effectually to make or mar the fiscal fortunes of the Government; except that, of course, it was always open to Parliament to criticise the financial expedients of the crown, such as the sale of monopolies, the levy of "impositions," and the collection of benevolences, and to influence, if it could, the policy pursued in relation to these matters.

**23. The House of Lords in 1485.**—Despite the numerous strictures that have been mentioned, Parliament in the Tudor period by no means stood still. The enormous power and independence exhibited by the chambers, especially the Commons, in the seventeenth century was the product of substantial, if more or less hidden, growth during the previous one hundred and fifty years. The composition of the two houses at the accession of Henry VII. was not clearly defined. The House of Lords was but a small body. It comprised simply those lords, temporal and spiritual, who were entitled to receive from the king, when a parliament was to be held, a special writ, i. e., an individual summons. The number of these was indeterminate. The right of the archbishops, the bishops, and the abbots to be summoned was immemorial and indisputable, although the abbots in practice evaded their obligation of attendance, save in cases in which it could be shown that as military tenants of the crown they were obligated to perform parliamentary duty. Among the lay nobility the selection of individuals for summons seems originally to have been dependent upon the

royal pleasure. Eventually, however, the principle became fixed that a man once summoned must be summoned whenever occasion should arise, and that, furthermore, his eldest son after him must be summoned in similar manner. What was at the outset an obligation became in time a privilege and a distinction, and by the day when it did so the rule had become legally established that the king could not withhold a writ of summons from the heir of a person who had been once summoned and had obeyed the summons by taking his seat. During the fourteenth century the aggregate membership of the chamber fluctuated in the neighborhood of 150. By reason of the withdrawal of some of the abbots and the decline of the baronage, in the fifteenth century the body was yet smaller. The number of temporal lords summoned to the first parliament of Henry VII. was but 29.

**24. The House of Commons in 1485.**—The House of Commons at the beginning of the Tudor period was a body of some 300 members. It contained 74 knights of the shire, representing all but three of the forty English counties, together with a fluctuating number of representatives of cities and boroughs. In the Model Parliament of 1295 the number of urban districts represented was 166, but as time went on the number declined, in part because of the discrimination exercised from time to time in the selection of boroughs to be represented, and in part by reason of the fact that in times when representation did not appear to yield tangible results the borough taxpayers begrudged the two shillings per day paid their representatives, in some instances sufficiently to be induced to abandon altogether the sending of members. By the time of Edward IV. (1399–1413) the number of represented towns had fallen to 111. At the beginning of the fifteenth century county members were elected by the body of freeholders present at the county court, but by statute of 1429 the electoral privilege was restricted to freeholders resident in the county and holding land of the yearly rental value of forty shillings, equivalent, perhaps, to some £30 to £40 in present values. This rule, adopted originally with the express purpose of disfranchising "the very great and outrageous number of people either of small substance or of no value" who had been claiming an electoral equality with the "worthy knights and squires," continued in operation without amendment until 1832. The electoral systems prevailing in the boroughs exhibited at all times the widest variation, and never prior to 1832 was there serious attempt to establish uniformity of practice. In some places (the so-called "scot and lot" boroughs) the suffrage was exercised by all rate-payers; in others, by the holders of particular tenements ("bur-

gage" franchise); in others (the "potwalloper" boroughs) by all citizens who had hearths of their own; in many, by the municipal corporation, or by the members of a guild, or even by neighboring landholders. Borough electoral arrangements ran the full gamut from thoroughgoing democracy to the narrowest kind of oligarchy.

**25. Development under the Tudors: Composition.**—During the Tudor period the composition of the two chambers underwent important change. In the Lords the principal modification was the substitution of temporal for spiritual preponderance. This was brought about in two ways. The first was the increase numerically of the hereditary peers from thirty-six at the beginning of the reign of Henry VIII. to about eighty at the accession of James I. The second was the dropping out of twenty-eight abbots, incident to the closing of the monasteries by Henry VIII. and only partially compensated by the creation at the time of six new bishoprics. In 1509 the number of lords spiritual was forty-eight; in 1603, it was but twenty-six. The House of Commons under the Tudors was virtually doubled in size. The final incorporation of Wales in 1535 meant the adding of twenty-five members. In 1536 and 1543 the counties of Monmouth and Chester were admitted to representation. There followed the enfranchisement of a number of boroughs, and by the end of the reign of Henry VIII. the representation of counties had been increased from 74 to 90, and that of the boroughs had been brought up to 252, giving the House an aggregate membership of 342. During the reign of Edward VI. twenty new constituencies were created, and during that of Mary twenty-one. But the most notable increase was that which took place in the reign of Elizabeth, the net result of which was the bringing in of 62 new borough representatives, in some cases from boroughs which now acquired for the first time the right of representation, in others from boroughs which once had possessed the right but through disuse had been construed to have forfeited it. The total increase of the Commons in numerical strength during the Tudor period was 166. There can be little question that in a few instances parliamentary representation was extended with the specific purpose of influencing the political complexion of the popular chamber. But, on the whole, the reason for the notable increase, especially of borough members, is to be found in the growing prosperity of the country and in the reliance which the Tudors were accustomed to place upon the commercial and industrial classes of the population.

**26. Other Developments.**—A second point at which Parliament in the Tudor era underwent modification was in respect to permanence and sittings. Prior to Henry VIII. the life of a parliament was con-

fined, as a rule, to a single session, and sessions were brief. But parliaments now ceased to be meetings to be broken up as soon as some specific piece of business should have been completed, and many were brought together in several succeeding sessions. Henry VIII.'s Reformation Parliament lasted seven years. During the forty-five years of Elizabeth there were ten parliaments and thirteen sessions. One of these parliaments lasted eleven years, although it met but three times. It is true that the parliaments of Elizabeth were in session, in the aggregate, somewhat less than three years, an average for the reign of but little more than three weeks a year. But the point is that, slowly but effectually, Parliament as an institution was acquiring a recognized position in the political system of the nation. In 1589 Thomas Smith, a court secretary, published a book entitled "The Commonwealth of England and the Manner of Government Thereof," in which was laid down the fundamental proposition that "the most high and absolute power of the realm of England consisteth in the parliament"; and there is no record that the proclamation of this doctrine, even by a court official, elicited serious protest or difference of opinion. It was in the Tudor period, further, that both houses instituted the keeping of journals and that the appointment of committees and numerous other aspects of modern parliamentary procedure had their beginnings.

Finally, the Elizabethan portion of the period was an epoch during which there took place a very real growth in independence of sentiment and an equally notable advance in consciousness of power on the part of the popular chamber. Even before the death of Elizabeth there were ill-repressed manifestations of the feeling that the Tudor monarchy had done its work and that the time for a larger amount of parliamentary control had arrived. Nothing was clearer in 1603 than the fact that the sovereign who should expect to get on agreeably with his Commons must be both liberal and tactful. That the Stuarts possessed the first of these qualities in only a very limited measure and the second one not at all is a fact upon which turns an entire chapter of English constitutional history.[1]

[1] Excellent works of a general nature on the Tudor period are H. A. L. Fisher, History of England from the Accession of Henry VII. to the Death of Henry VIII. (London, 1906); A. F. Pollard, History of England from the Accession of Edward VI. to the Death of Elizabeth (London, 1910); and A. D. Innis, England under the Tudors (London, 1905). For institutional history see Taylor, English Constitution, II., Bk. 4. More specialized treatment will be found in Smith, History of the English Parliament, I., Bk. 5; Dicey, The Privy Council, 76–130; and Taswell-Langmead, English Constitutional History, Chaps. 10, 12. An excellent survey of English public law at the death of Henry VII. is contained in F. W. Maitland,

## VIII. The Stuarts: Crown and Parliament

**27. Absolutism Becomes Impracticable.**—Throughout the larger portion of the seventeenth century the principal interest in English politics centers in the contest which was waged between the nation represented in Parliament and the sovereigns of the Stuart dynasty. The question, as one writer has put it, was "at first whether government should be by the king or by the king in parliament, afterwards whether the king should govern or whether parliament should govern." [1] The Stuart sovereigns brought with them to the English throne no political principles that were new. When James I., in a speech before Parliament March 21, 1610, declared that monarchy "is the supremest thing upon earth," and that, "as to dispute what God may do is blasphemy, . . . so is it sedition in subjects to dispute what a King may do in the height of his power," [2] he was but giving expression to a conception of the royal prerogative which had been lodged in the mind of every Tudor, but which no Tudor had been so tactless as publicly to avow. The first two Stuarts confidently expected to maintain the same measure of absolutism which their Tudor predecessors had maintained—nothing more, nothing less. There were, however, several reasons why, for them, this was an impossibility. The first arose from their own temperament. The bluntness, the lack of perception of the public will, and the disposition perpetually to insist upon the minutest definitions of prerogative, which so preeminently characterized the members of the Stuart house must have operated to alienate seventeenth-century Englishmen under even the most favorable of circumstances. A second consideration is the fact, of which the nation was fully cognizant, that under the changed conditions that had arisen there was no longer the need of strong monarchy that once there had been. Law and order had long since been secured; all danger of a feudal reaction had been effectually removed; foreign invasion was no more to be feared. Strong monarchy had served an invaluable purpose, but that purpose had been fulfilled.

Constitutional History of England (Cambridge, 1911), 165–236. Books of large value on the period include W. Busch, England under the Tudors, trans. by A. M. Todd (London, 1895), the only volume of which published covers the reign of Henry VII.; A. F. Pollard, Henry VIII. (London, 1902 and 1905), and England under the Protector Somerset (London, 1900); and M. Creighton, Queen Elizabeth (new ed., London, 1899).

[1] C. Ilbert, Parliament, its History, Constitution, and Practice (London and New York, 1911), 28–29.

[2] Prothero, Statutes and Constitutional Documents, 293–204.

**28. The Rights of the Commons Asserted.**—Finally there was the fact of the enormous growth of Parliament as an organ of the public will. The rapidity of that development in the days of Elizabeth is, and was at the time, much obscured by the disposition of the nation to permit the Queen to live out her days without being seriously crossed in her purposes. But the magnitude of it becomes apparent enough after 1603. In a remarkable document known as the Apology of the Commons, under date of June 20, 1604, the popular chamber stated respectfully but frankly to the new sovereign what it considered to be its rights and, through it, the rights of the nation. "What cause we your poor Commons have," runs the address, "to watch over our privileges, is manifest in itself to all men. The prerogatives of princes may easily, and do daily, grow; the privileges of the subject are for the most part at an everlasting stand. They may be by good providence and care preserved, but being once lost are not recovered but with much disquiet. The rights and liberties of the Commons of England consisteth chiefly in these three things: first, that the shires, cities, and boroughs of England, by representation to be present, have free choice of such persons as they shall put in trust to represent them; secondly, that the persons chosen, during the time of the parliament, as also of their access and recess, be free from restraint, arrest, and imprisonment: thirdly, that in parliament they may speak freely their consciences without check and controlment, doing the same with due reverence to the sovereign court of parliament, that is, to your Majesty and both the Houses, who all in this case make but one politic body, whereof your Highness is the head." [1] The shrewdness of the political philosophy with which this passage opens is matched only by the terseness with which the fundamental rights of the Commons as a body are enumerated. To the enumeration should be added, historically, an item contained in a petition of the Commons, May 23, 1610, which reads as follows: "We hold it an ancient, general, and undoubted right of Parliament to debate freely all matters which do properly concern the subject and his right or state; which freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved." [2] The occasion for this last-mentioned assertion of right arose from the king's habitual assumption that there were various important matters of state, e. g., the laying of impositions and the conduct of foreign relations, which Parliament possessed no right so much as to discuss.

[1] Petyt, Jus Parliamentarium (London, 1739), 227–243. Portions of this document are printed in Prothero, Statutes and Constitutional Documents, 286–293.

[2] Commons' Journals, I., 431; Prothero, Statutes, 297.

**29. The Parliaments of James I. and Charles I.**—The tyranny of James I. and Charles I. assumed the form, principally, of the issue of proclamations without the warrant of statute and the exaction of taxes without the assent of Parliament. Parliament, during the period 1603–1640, was convened but seldom, and it was repeatedly prorogued or dissolved to terminate its inquiries, thwart its protests, or subvert its projected measures. Under the disadvantage of recurrent interruption the Commons contrived, however, to carry on a contest with the crown which was essentially continuous. During the reign of James I. (1603–1625) there were four parliaments. The first, extending from 1604 to 1611, was called in session six times. It sorely displeased the king by remonstrating against his measures, and especially by the persistency with which it withheld subsidies pending a redress of grievances. The second, summoned in 1614, vainly reiterated the complaints of its predecessor and was dissolved without having enacted a single measure. The third, in 1621, revived the power of impeachment (dormant since the days of Henry VII.), reasserted the right of the chambers to debate foreign relations, and avenged by a fresh protestation of liberties the arrest of one of its members. The fourth, in 1624, abolished monopolies and renewed the attack upon proclamations. The first parliament of Charles I., convoked in 1625, criticised the policy of the new sovereign and was dissolved. The second, in 1626, was dissolved to prevent the impeachment of the king's favorite minister, the Duke of Buckingham. The third, in 1628–1629, drew up the memorable Petition of Right, to which the king gave reluctant assent, and in which arbitrary imprisonment, the billeting of soldiers, the establishment of martial law in time of peace, and the imposition of gifts, loans, benevolences, or taxes without the consent of Parliament were specifically prohibited.[1] The fourth of Charles's parliaments, the so-called Short Parliament of 1640, followed a period of eleven years of personal government and showed no disposition to surrender the rights that had been asserted. The fifth—the Long Parliament, convoked also in 1640—imprisoned and executed the king's principal advisers, abolished the Star Chamber and the several other special courts and councils of Tudor origin, pronounced illegal the levy of ship-money and of tonnage and poundage without parliamentary assent, made provision for the assembling of a parliament within three years of the dissolution of the present one, and forced the king into a position where he was obliged to yield or to resort to war.

[1] The text of the Petition of Right is printed in Stubbs, Select Charters, 515–517; Adams and Stephens, Select Documents, 339–342.

**30. The Commonwealth and the Protectorate.**—Between the political theory maintained by the Stuart kings and that maintained by the parliamentary majority it was found impossible to arrive at a compromise. The Civil War was waged, in the last analysis, to determine which of the two theories should prevail. It should be emphasized that the parliamentarians entered upon the contest with no intent to establish a government by Parliament alone, in form or in fact. It is sufficiently clear from the Grand Remonstrance of 1641 [1] that what they contemplated was merely the imposing of constitutional restrictions upon the crown, together with the introduction of certain specific changes in the political and ecclesiastical order, e. g., the abolition of episcopacy. The culmination of the struggle, however, in the defeat and execution of the king threw open the doors for every sort of constitutional innovation, and between 1649 and 1660 the nation was called upon to pass through an era of political experimentation happily unparalleled in its history. May 19, 1649, kingship and the House of Lords having been abolished as equally "useless and dangerous,"[2] Parliament, to complete the work of transformation, proclaimed a commonwealth, or republic; and on the great seal was inscribed the legend, "In the first year of freedom by God's blessing restored." During the continuance of the Commonwealth (1649–1654) various plans were brought forward for the creation of a parliament elected by manhood suffrage, but with the essential principle involved neither the Rump nor the people at large possessed substantial sympathy. In 1654 there was put in operation a constitution—the earliest among written constitutions in modern Europe—known as the Instrument of Government.[3] The system therein provided, which was intended to be extended to the three countries of England, Scotland, and Ireland, comprised as the executive power a life Protector, to be assisted by a council of thirteen to twenty-one members, and as the legislative organ a unicameral parliament of 460 members elected triennially by all citizens possessing property to the value of £300.[4] Cromwell accepted the office of Protector, and the en-

[1] S. R. Gardiner, Constitutional Documents of the Puritan Revolution (Oxford, 1899), 202–232.

[2] Gardiner, Documents of the Puritan Revolution, 384–388; Adams and Stephens, Select Documents, 397–400.

[3] Gardiner, Documents of the Puritan Revolution, 405–417; Adams and Stephens, Select Documents, 407–416.

[4] On the history of this unicameral parliament see J. A. R. Marriott, Second Chambers, an Inductive Study in Political Science (Oxford, 1910), Chap. 3; A. Esmein, Les constitutions du protectorat de Cromwell, in *Revue du Droit Public*, Sept.–Oct. and Nov.–Dec., 1899.

suing six years comprise the period known commonly as the Protectorate.

The government provided for by the Instrument was but indifferently successful. Between Cromwell and his parliaments relations were much of the time notoriously strained, and especially was there controversy as to whether the powers of Parliament should be construed to extend to the revision of the constitution. In 1657 the Protector was asked to assume the title of king. This he refused to do, but he did accept a new constitution, the Humble Petition and Advice, in which a step was taken toward a return to the governmental system swept away in 1649.[1] This step comprised, principally, the re-establishment of a parliament of two chambers—a House of Commons and, for lack of agreement upon a better designation, "the Other House." Republicanism, however, failed to strike root. Shrewder men, including Cromwell, had recognized all the while that the English people were really royalist at heart, and it is not too much to say that from the outset the restoration of monarchy was inevitable. Even before the death of Cromwell, in 1658, the trend was distinctly in that direction, and after the hand of the great Protector had been removed from the helm such a consummation was a question but of time and means. May 25, 1660, Charles II., having engaged to grant a general amnesty and to accept such measures of settlement respecting religion as Parliament should determine upon, landed at Dover and was received with all but universal acclamation.[2]

[1] Gardiner, Documents of the Puritan Revolution, 447–459.

[2] The best of the general treatises covering the period 1603–1660 are F. C. Montague, The History of England from the Accession of James I. to the Restoration (London, 1907), and G. M. Trevelyan, England Under the Stuarts (London, 1904). The monumental works within the field are those of S. R. Gardiner, i. e., History of England, 1603–1642, 10 vols. (new ed., London, 1893–1895); History of the Great Civil War, 4 vols. (London, 1894); and History of the Commonwealth and Protectorate, 4 vols. (London, 1894–1901). Mr. Gardiner's work is being continued by C. H. Firth, who has published The Last Years of the Protectorate, 1656–1658, 2 vols. (London, 1909). The development of institutions is described in Taswell-Langmead, English Constitutional History, Chaps. 13–14; Smith, History of the English Parliament, I., Bks. 6–7; Pike, History of the House of Lords, *passim;* J. N. Figgis, The Theory of the Divine Right of Kings (Cambridge, 1896); and G. P. Gooch, History of English Democratic Ideas in the Seventeenth Century (Cambridge, 1898). An excellent analysis of the system of government which the Stuarts inherited from the Tudors is contained in the introduction of Prothero, Statutes and Constitutional Documents. Of the numerous biographies of Cromwell the best is C. H. Firth, Oliver Cromwell (New York, 1904). A valuable survey of governmental affairs at the death of James I. is Maitland, Constitutional History of England, 237–280.

## IX. The Later Stuarts: the Revolution of 1688–1689

**31. Charles II. and James II.**—Throughout the period 1660–1689 there was enacted a final grand experiment to determine whether a Stuart could, or would, govern constitutionally. The constitution in accordance with which Charles II. and James II. were expected to govern was that which had been built up during preceding centuries, amended by the important reforms effected by the Long Parliament in 1641. The settlement of 1660 was a restoration no less of Parliament than of the monarchy, in respect both to structure and to functions. The two chambers were re-established upon their earlier foundations, and in them was vested the power to enact all legislation and to sanction all taxation. The spirit, if not the letter, of the agreement in accordance with which the Stuart house was restored forbade the further imposition of taxes by the arbitrary decree of the crown and all exercise of the legislative power by the crown singly, whether positively through proclamation or negatively through dispensation. It required that henceforth the nature and amount of public expenditures should, upon inquiry, be made known to the two houses, and that ministers might regularly be held to account for their acts and those of the sovereign. The easy-going Charles II. (1660–1685) contrived most of the time to keep fairly within the bounds that were prescribed for him. He disliked the religious measures of his first parliament, but he recognized that a fresh election might be expected to result in the choice of a House of Commons still less to his taste, and, accordingly, the Cavalier Parliament was kept in existence throughout the entire period 1661-1679. The parliamentary history of the closing years of the reign centered about the question of the exclusion of the king's Catholic brother, James, from the throne, and was given special interest by the conflict of groups foreshadowing political parties; but Charles maintained unfailingly an attitude which, at the least, did not endanger his own tenure of the throne.

James II. (1685–1688) was a man of essentially different temper. He was a Stuart of the Stuarts, irrevocably attached to the doctrine of divine right and sufficiently tactless to take no pains to disguise the fact. He was able, industrious, and honest, but obstinate and intolerant. He began by promising to preserve "the government as by law established." But the ease with which the Monmouth uprising of 1685 was suppressed deluded him into thinking that through the exemption of the Catholics from the operation of existing laws he might in time realize his ambition to re-establish Roman Catholi-

cism in England. He proceeded, therefore, to issue decrees dispensing with statutes which Parliament had enacted, to establish an ecclesiastical commission in violation of parliamentary law of 1641, and, in 1687, to promulgate a declaration of indulgence extending to all Catholics and Non-Conformists a freedom in religious matters which was clearly denied by the laws of the country.[1] By this arbitrary resumption of ancient prerogative the theory underlying the Restoration was subverted utterly.

**32. The Revolution: the Bill of Rights.**—Foreseeing no relief from absolutist practices, and impelled especially by the birth, in 1688, of a male heir to the king, a group of leading men representing the various political groups extended to the stadtholder of Holland, William, Prince of Orange, an invitation to repair to England to uphold and protect the constitutional liberties of the realm. The result was the bloodless revolution of 1688. November 5, William landed at Torquay and advanced toward London. James, finding himself without a party, offered vain concessions and afterwards fled to the court of his ally, Louis XIV. of France. By a provisional body of lords, former commoners, and officials William was requested to act as temporary "governor" until the people should have chosen a national "convention."[2] This convention assembled January 22, 1689, resolved that James, by reason of his flight, should be construed to have abdicated, and established on the throne as joint sovereigns William and Mary, with the understanding that the actual government of the realm should devolve upon the king.

The Revolution of 1688–1689 was signalized by the putting into written form of no inconsiderable portion of the English constitution as it then existed. February 19, 1698, the new sovereigns formally accepted a Declaration of Right, drawn up by the convention, and by act of Parliament, December 16 following, this instrument, under the name of the Bill of Rights, was made a part of the law of the land. In it were denied specifically a long list of prerogatives to which the last Stuart had laid claim—those, in particular, of dispensing with the laws, establishing ecclesiastical commissions, levying imposts without parliamentary assent, and maintaining a standing army under the exclusive control of the crown. In it also were guaranteed certain fundamental rights which during the controversies of the seventeenth century had been brought repeatedly in question, including those of petition, freedom of elections, and freedom of speech

[1] Gee and Hardy, Documents Illustrative of English Church History, 641–644; Adams and Stephens, Select Documents, 451–454.

[2] Not properly a parliament, because not summoned by a king.

on the part of members of Parliament.[1] The necessity of frequent meetings of Parliament was affirmed, and a succession clause was inserted by which Roman Catholics and persons who should marry Roman Catholics, were excluded from the throne. In the Bill of Rights were thus summed up the essential results of the Revolution, and, more remotely, of the entire seventeenth-century parliamentary movement. With its enactment the doctrine of divine right disappeared forever from the domain of practical English politics. The entire circumstance of William III.'s accession determined the royal tenure to be, as it thereafter remained, not by inherent or vested right, but conditioned upon the national will.[2]

[1] In this connection should be recalled the Habeas Corpus Act of May 26, 1679, by whose terms the right of an individual, upon arrest, to have his case investigated without delay was effectually guaranteed. Stubbs, Select Charters, 517–521; Adams and Stephens, Select Documents, 440–448.

[2] In respect to ecclesiastical affairs the Bill of Rights was supplemented by the Toleration Act of May 24, 1689, in which was provided "some ease to scrupulous consciences in the exercise of religion," i. e., a larger measure of liberty for Protestant non-conformists. The text of the Bill of Rights is in Stubbs, Select Charters, 523–528; Gee and Hardy, Documents Illustrative of English Church History, 645–654; and Adams and Stephens, Select Documents, 462–469; that of the Toleration Act, in Gee and Hardy, 654–664; and, in abridged form, in Adams and Stephens, 459–462. General accounts of the period 1660–1689 are contained in R. Lodge, History of England from the Restoration to the Death of William III. (London, 1910), Chaps. 1–15, and in Trevelyan, England Under the Stuarts, Chaps. 11–13. O. Airy, Charles II., is an excellent book. The development of Parliament in the period is described in Smith, History of the English Parliament, I., Bk. 8, II., Bk. 9.

## CHAPTER II

### THE CONSTITUTION SINCE THE SEVENTEENTH CENTURY

#### I. Crown and Parliament after 1789

**33. Elements of Stability and Change.**—Structurally, the English governmental system was by the close of the seventeenth century substantially complete. The limited monarchy, the ministry, the two houses of parliament, the courts of law, and the local administrative agencies were by that time constituted very much as they are to-day. The fundamental principles, furthermore, upon which English government is operated were securely established. Laws could be enacted only by "the king in parliament"; taxes could be levied only in the same manner; the liberty of the individual was safeguarded by a score of specific and oft-renewed guarantees. In point of fact, however, the English constitution of 1689 was very far from being the English constitution of 1912. The overturn by which the last Stuart was driven from the throne not only marked the culmination of the revolution commenced in 1640; it comprised the beginning of a more extended revolution, peaceful but thoroughgoing, by which the governmental system of the realm was amplified, carried in new directions, and successively readapted to fresh and changing conditions. At no time from William III. to George V. was there a deliberate overhauling of the governmental system as a whole. Save in occasional parliamentary enactments and judicial decisions, the constitutional changes which were wrought were rarely given documentary expression. Yet it is hardly too much to say that of the principles and practices which to-day make up the working constitution of the United Kingdom almost all were originated or reshaped during the eighteenth and nineteenth centuries. In describing, in succeeding chapters, the principal aspects of this governmental system it will be necessary frequently to allude to these more recent constitutional developments, and it would but involve repetition to undertake an account of them at this point. An enumeration and a brief characterization of a few of the more important will serve for the moment to impress the importance constitutionally of the period under consideration.

**34. The Decreased Authority of the Crown.**—First may be mentioned the gradual eclipse of the crown and the establishment of complete and unquestioned ascendancy on the part of Parliament. In consequence of the Revolution of 1688–1689 the sovereign was shorn definitely of a number of important prerogatives. William III., however, was no figure-head, and the crown was far from having been reduced to impotence. Understanding perfectly the conditions upon which he had been received in England, William none the less did not attempt to conceal his innate love of power. He claimed prerogatives which his Whig supporters were loath to acknowledge and he exercised habitually in person, and with telling effect, the functions of sovereign, premier, foreign minister, and military autocrat.[1] His successor, Anne, though apathetic, was hardly less attached to the interests of strong monarchy. It was only with the accession of the Hanoverian dynasty, in 1714, that the bulk of those powers of government which hitherto the crown had retained slipped inevitably into the grasp of the ministers and of Parliament. George I. (1714–1727) and George II. (1727–1760) were not the nonentities they have been painted, but, being alien alike to English speech, customs, and political institutions, they were in a position to defend but indifferently the prerogatives which they had inherited. Under George III. (1760–1820) there was a distinct recrudescence of the monarchical idea. The king, if obstinate and below the average intellectually, was honest, courageous, and ambitious. He gloried in the name of Englishman, and, above all, he was determined to recover for the crown some measure of the prestige and authority which his predecessors had lost. The increasingly oligarchical character of Parliament in the period and the disintegration of the ruling Whig party created a condition not unfavorable for the realization of the royal programme, and through at least a score of years the influence which the sovereign exerted personally upon government and politics exceeded anything that had been known since the days of William III. In 1780 the House of Commons gave expression to its apprehension by adopting a series of resolutions, the first of which asserted unequivocally that "the influence of the crown has increased, is increasing, and ought to be diminished."

After the retirement of Lord North, in 1782, however, the influence of the sovereign declined perceptibly, and during the later portion of the reign, clouded by the king's insanity, all that had been gained for royalty was again lost. Under the Regency (1810–1820) and during

[1] On the constitution as it was at the death of William III., see Maitland, Constitutional History of England, 281–329.

the reign of the reactionary and scandal-smirched George IV. (1820–1830) the popularity, if not the power, of the crown reached its nadir. In the days of the genial William IV. (1830–1837) popularity was regained, but not power. The long reign of the virtuous Victoria (1837–1901) served completely to rehabilitate the monarchy in the respect and affections of the British people, a consummation whose stability more recent sovereigns have done nothing to impair. As will be pointed out in another place, the influence which the sovereign may wield, and during the past three-quarters of a century has wielded, in the actual conduct of public affairs is far from inconsiderable. But, as will also be emphasized, that influence is but the shadow of the authority which the crown once—even as late as the opening of the eighteenth century—possessed. It is largely personal rather than legal; it is asserted within the domain of foreign relations rather more than within that of domestic affairs; and as against the adverse will of the nation expressed through Parliament it is, in effect, powerless.[1]

**35. Ascendancy of the House of Commons.**—A second transformation wrought in the working constitution since 1689 is the shifting of the center of gravity in Parliament from the House of Lords to the House of Commons, together with a notable democratizing of the representative chamber. In the days of William and Anne the House of Lords was distinctly more dignified and influential than the House of Commons. During the period covered by the ministry of Walpole (1721–1742), however, the Commons rose rapidly to the position of the preponderating legislative branch. One contributing cause was the Septennial Act of 1716, whereby the life of a parliament was extended from three years to seven, thus increasing the continuity and desirability of membership in the Commons. Another was the growing importance of the power of the purse as wielded by the Commons. A third was the fact that Walpole, throughout his prolonged ministry, sat steadily as a member of the lower chamber and made it the scene of his remarkable activities. The establishment of the supremacy of the Commons as then constructed did not, however, mean the triumph of popular government. It was but a step toward that end. The House of Commons in the eighteenth

[1] On the monarchical revival under George III., see D. A. Winstanley, Personal and Party Government; a Chapter in the Political History of the Early Years of the Reign of George III., 1760–1766 (Cambridge, 1910). For an excellent appraisal of the status of the crown throughout the period 1760–1860 see T. E. May, The Constitutional History of England since the Accession of George III., edited and continued by F. Holland, 3 vols. (London, 1912), I., Chaps. 1–2.

century was composed of members elected in the counties and boroughs upon a severely restricted franchise or appointed outright by closed corporations or by individual magnates, and it remained for Parliament during the nineteenth century, by a series of memorable statutes, to extend the franchise successively to groups of people hitherto politically powerless, to reapportion parliamentary seats so that political influence might be distributed with some fairness among the voters, and to regulate the conditions under which campaigns should be carried on, elections conducted, and other operations of popular government undertaken. Of principal importance among the enactments by which these things were accomplished are the Reform Act of 1832, the Representation of the People Act of 1867, the Ballot Act of 1872, the Corrupt and Illegal Practices Act of 1883, the Representation of the People Act of 1884, and the Redistribution of Seats Act of 1885. The nature of these measures will be explained subsequently.[1]

## II. Rise of the Cabinet and of Political Parties

**36. Cabinet Origins.**—In the third place, the period under review is important by reason of the development within it of the most remarkable feature of the English constitutional system to-day, namely, the cabinet. The creation of the cabinet was a gradual process, and both the process and the product are utterly unknown to the letter of English law. It is customary to regard as the immediate antecedent of the cabinet the so-called "cabal" of Charles II., i. e., the irregular group of persons whom that sovereign selected from the Privy Council and took advice from informally in lieu of the Council itself. In point of fact, by reason principally of the growing unwieldiness of the Privy Council, the practice of deferring for advice to a specially constituted committee, or inner circle, of the body far antedated Charles II. By some it has been traced to a period as remote as the reign of Henry III., and it is known that not only the thing itself, but also the name "cabinet council," existed under Charles I. The essential justification of the creation of the cabinet was stated by Charles II. in 1679 in the declaration that "the great number of the Council has made it unfit for the secrecy and despatch that are necessary in many great affairs." The growing authority of the select circle of advisors was the object of repeated attacks, and the name "cabinet" (arising from the king's habit of receiving the members in a small private room, or cabinet, in the royal palace) was applied at first as a term of reproach. The device met, however, a genuine need, and by 1689 its perpetuation was

[1] See pp. 80–86.

assured. The larger Privy Council was continued in existence, and it exists to-day; but its powers became long ago merely nominal.[1]

**37. Principles of Cabinet Government Established**—Under William III. the cabinet took on rapidly the character which it bears to-day. Failing in the attempt to govern with a cabinet including both Whigs and Tories, William, in 1693–1696, gathered about himself a body of advisers composed exclusively of Whigs, and the principle speedily became established for all time that a cabinet group must be made up of men who in respect to all important matters of state are in substantial agreement. Before the close of the eighteenth century there had been fixed definitely the conception of the cabinet as a body necessarily consisting (a) of members of Parliament (b) of the same political views (c) chosen from the party possessing a majority in the House of Commons (d) prosecuting a concerted policy (e) under a common responsibility to be signified by collective resignation in the event of parliamentary censure, and (f) acknowledging a common subordination to one chief minister.[2] During the eighteenth-century era of royal weakness the cabinet acquired a measure of independence by which it was enabled to become, for all practical purposes, the ruling authority of the realm; and, under the limitation of strict accountability to the House of Commons, it fulfills substantially that function to-day. Its members, as will appear, are at the same time the heads of the principal executive departments, the leaders in the legislative chambers, and the authors of very nearly the whole of governmental policy and conduct.[3]

**38. Beginnings of Political Parties.**—A fourth phase of governmental development within the period under survey is the rise of political parties and the fixing of the broader aspects of the present party system. In no nation to-day does party play a rôle of larger importance than in Great Britain. Unknown to the written portions of the constitution, and all but unknown to the ordinary law, party management and party operations are, none the less, of constant and fundamental importance in the actual conduct of government. The origins of political parties in England fall clearly within the seven-

[1] H. W. V. Temperley, The Inner and Outer Cabinet and the Privy Council, 1679–1683, in *English Historical Review*, Oct., 1912.

[2] H. D. Traill, Central Government (London, 1881), 24–25.

[3] On the rise of the cabinet see, in addition to the general histories, M. T. Blauvelt, The Development of Cabinet Government in England (New York, 1902), Chaps. 1–8; E. Jenks, Parliamentary England; the Evolution of the Cabinet System (New York, 1903); and H. B. Learned, Historical Significance of the Term "Cabinet" in England and the United States, in *American Political Science Review*, August, 1909.

teenth century. It was the judgment of Macaulay that the earliest of groups to which the designation of political parties can be applied were the Cavalier and Roundhead elements as aligned after the adoption of the Grand Remonstrance by the Long Parliament in 1641. The first groups, however, which may be thought of as essentially analogous to the political parties of the present day, possessing continuity, fixity of principles, and some degree of compactness of organization, were the Whigs and Tories of the era of Charles II. Dividing in the first instance upon the issue of the exclusion of James, these two elements, with the passage of time, assumed well-defined and fundamentally irreconcilable positions upon the essential public questions of the day. Broadly, the Whigs stood for toleration in religion and for parliamentary supremacy in government; the Tories for Anglicanism and the prerogative. And long after the Stuart monarchy was a thing of the past these two great parties kept up their struggles upon these and other issues. After an unsuccessful attempt to govern with the co-operation of both parties William III., as has been pointed out, fell back definitely upon the support of the Whigs. At the accession of Queen Anne, in 1702, however, the Whigs were turned out of office and the Tories (who already had had a taste of power in 1698–1701) were put in control. They retained office during the larger portion of Queen Anne's reign, but at the accession of George I. they were compelled to give place to their rivals, and the period 1714–1761 was one of unbroken Whig ascendancy. This was, of course, the period of the development of the cabinet system, and between the rise of that system and the growth of government by party there was an intimate and inevitable connection. By the close of the eighteenth century the rule had become inflexible that the cabinet should be composed of men who were in sympathy with the party at the time dominant in the House of Commons, and that the returning by the nation to the representative chamber of a majority adverse to the ruling ministry should be followed by the retirement of the ministry.[1]

## III. The Scottish and Irish Unions

**39. The Union with Scotland, 1707.**—Finally may be mentioned the important changes in the governmental structure which arose from the Act of Union with Scotland, in 1707, and the Act of Union with Ireland, in 1801. Except during a brief portion of the period of the Protectorate, the legal relation of England and Wales, on the one

[1] For references on the history of English political parties see pp. 144, 160, 166.

side, and the kingdom of Scotland, on the other, was from 1603 to 1707 that simply of a personal union through the crown. Scotland had her own parliament, her own established church, her own laws, her own courts, her own army, and her own system of finance. By the Act of 1707 a union was established of a far more substantial sort. The two countries were erected into a single kingdom, known henceforth as Great Britain. The Scottish parliament was abolished and representation was accorded the Scottish nobility and people in the British parliament at Westminster. The quota of commoners was fixed at forty-five (thirty to be chosen by the counties and fifteen by the boroughs) and that of peers (to be elected by the entire body of Scottish peers at the beginning of each parliament) at sixteen. All laws respecting trade, excises, and customs were required to be uniform throughout the two countries, but the local laws of Scotland upon other subjects were continued in operation, subject to revision by the common parliament. The Scottish judicial system remained unchanged; [1] likewise the status of the established Presbyterian Church.[2]

**40. The Union with Ireland, 1801.**—The history of Ireland, in most of its phases, is that of a conquered territory, and until late in the eighteenth century the constitutional status of the country approximated, most of the time, that of a crown colony. During the Middle Ages the Common Law and the institutions of England were introduced in the settled portions of the island (the Pale), and a parliament of the English type began to be developed; but Poynings's Law of 1494, by requiring the assent of the English king and council for the convening of an Irish parliament, by enjoining that all bills considered by the Irish parliament must first have been considered by the English parliament, and by declaring all existing statutes of the English parliament to be binding upon Ireland, effectually stifled, until its repeal in 1782, Irish parliamentary development. From the middle of the seventeenth century Catholics were debarred from membership, and, from the early eighteenth, from voting at parliamentary elections. The repeal of Poynings's Law in 1782 and the removal of the Catholic disqualification ten years later bettered the situation, yet at the close of the eighteenth century Irish governmental arrangements were still very unsatisfactory. Parliament was independent in the making of laws, but not in the control of administration; and it was in no true sense a national and representative body. The policy urged by Pitt, namely,

[1] Save that appeals might be carried from the Scottish Court of Session to the House of Lords.

[2] J. Mackinnon, The Union of England and Scotland (London, 1896). This scholarly volume covers principally the period 1695-1745.

the establishment of a legislative union on the plan of that which already existed between England and Scotland, gradually impressed itself upon the members of Parliament as more feasible than any other.

An Act of Union creating the "United Kingdom of Great Britain and Ireland" was adopted by the Irish parliament in February, 1800, and by the British parliament five months later, and, January 1, 1801, it was put in operation. Under the terms of this measure the Irish parliament was abolished, and it was arranged that Ireland should be represented in the common parliament [1] by four spiritual lords and twenty-eight temporal peers, chosen by the Irish peerage for life, and by one hundred members (sixty-four sitting for counties, thirty-five for boroughs, and one for the University of Dublin) of the House of Commons. The Anglican Church of Ireland was amalgamated with the established Church of England, though, subsequently in 1869, it was disestablished and disendowed. The union with Ireland was in the nature of a contract, and while in a number of respects the conditions which were involved in it have been altered within the past hundred years, its fundamentals stand to-day unchanged. It is these fundamentals, especially the assimilation of Ireland with Great Britain for legislative purposes, which are the object of relentless attack on the part of the Home Rule and other nationalistic and reforming elements.[2]

## IV. The Nature and Sources of the Constitution

**41. The Elusiveness of the Constitution.**—The description of the British governmental system which is hereafter to be undertaken will be clarified by a word of comment at this point upon the character which the English constitution of to-day has assumed, upon the form in which it exists, and upon the sources from which it has been drawn. The term "constitution," as is familiarly understood, may be employed to denote a written instrument of fundamental law which has been framed by a constituent assembly, drafted by an ordinary legislative body, or promulgated upon the sole authority of a dictator or monarch; or, with equal propriety, it may be used to designate a body

[1] Styled "the Parliament of the United Kingdom of Great Britain and Ireland."

[2] An abridgment of the text of the Act of Union with Scotland is printed in Adams and Stephens, Select Documents, 479–483; of that of the Act of Union with Ireland, ibid., 497–506. The full text of the former will be found in Robertson, Select Statutes, Cases, and Documents, 92–105; that of the latter, ibid., 157–164. On Ireland before the Union see May and Holland, Constitutional History of England, II., Chap. 16.

of customs, laws, and precedents, but partially, or even not at all, committed to writing, in accordance with which the machinery of a given governmental system is operated. The constitution of the United Kingdom of Great Britain and Ireland is of this second type. The student who desires to bring together the principles and to tabulate the working details of the British constitutional order will find no single document, nor any collection of documents, in which these things are wholly, or even largely, set down. For the accomplishment of such a task it would be necessary to review intensively a thousand years and more of history, to lay hold of a statute here and of a judicial decision there, to take constant cognizance of the rise and crystallization of political usages, and to probe to their inmost recesses the mechanisms of administration, law-making, taxation, elections, and judicial procedure as they have been, and as they are actually operated before the spectator's eyes. Foremost among its compeers in antiquity, in comprehensiveness, and in originality, the British constitution is at once the least tangible and the most widely influential among European bodies of fundamental law.

**42. Constituent Elements: the Law.**—The elements of which this constitution is to-day composed have been classified in various ways. For present purposes they may be gathered in five principal categories. In the first place, there are treaties and other international agreements, which in Great Britain as in the United States are invested with the character of supreme law of the land. In the second place, there is a group of solemn engagements which have been entered into at times of national crisis between parties representing opposed, or contracting, political forces. Of such character are the Great Charter, the Petition of Right, and the Bill of Rights. A third and larger category comprises parliamentary statutes which add to or modify governmental powers or procedure. Statutes of this type include clearly the Habeas Corpus Act of 1679, the Act of Settlement of 1701, the Septennial Act of 1716, Fox's Libel Act of 1792, the Reform Acts of 1832, 1867, and 1884, the Municipal Corporations Act of 1835, the Parliamentary and Municipal Elections Act of 1872, the Local Government Acts of 1888 and 1894, and the Parliament Act of 1911. In the fourth place there is the Common Law, a vast body of legal precept and usage which through the centuries has acquired fundamental and immutable character. The first three elements mentioned, i. e., treaties, solemn political engagements, and statutes, exist solely, or almost so, in written form. The rules of the Common Law, however, have not been reduced to writing, save in so far as they are contained in reports, legal opinions, and, more particularly, authoritative decisions

of the courts, such as those on the rights of jurymen, on the prerogative of the crown, on the privileges of the houses of Parliament and of their members, and on the rights and duties of the police.

**43. Constituent Elements: the Conventions.**—Finally, there are those portions of the constitution which have been denominated with aptness by Mr. Dicey "the conventions."[1] The "law" of the constitution, comprising the four categories of elements which have been enumerated, is at all points, whether written or unwritten, enforceable by the courts; the conventions, although they may and not seldom do relate to matters of vital importance, are not so enforceable. The conventions consist of understandings, practices, and habits by which are regulated a large proportion of the actual operations of the governmental authorities. They may have acquired expression in written form, but they do not appear in the statute-books or in any instrument which can be made the basis of action in a court of law. For example, it is a convention of the constitution which forbids the king to veto a measure passed by the houses of Parliament. If the sovereign were in these days actually to veto a bill, the political consequences might be serious, but there could be no question of the sheer legality of the deed. It is by virtue of a convention, not a law, of the constitution, that ministers resign office when they have ceased to command the confidence of the House of Commons; that a bill must be read three times before being finally voted upon in the House of Commons; that Parliament is convened annually and that it consists of two houses. The cabinet, and all that the cabinet, as such, stands for, rests entirely upon convention. To these things, and many others, the student who is concerned exclusively with the constitutional law of the British nation may give little or no attention. But by one who is seeking to understand the constitutional system as it is and as it operates attention must be fixed upon the conventions quite as steadily as upon the positive rules of law. If the conventions are not to be regarded as technically parts of the constitution, they are at least not infrequently as binding in practice as are these rules; and they may be even more determinative of the operations of the public powers.[2] The English constitution is indeed, as Mr. Bryce has described it, "a mass of precedents carried in men's minds or recorded in writing, dicta of

[1] Introduction to the Study of the Law of the Constitution (7th ed., London, 1908), 22–29.

[2] Convention occupies a large place in most political systems, even in countries which are governed under elaborate written constitutions. Their importance in the government of the United States is familiar (see Bryce, American Commonwealth, 3d ed., I., Chaps. 34–35). On the influence of conventions in France see H. Chardon, L'Administration de la France; les fonctionnaires (Paris, 1908), 79–105.

lawyers or statesmen, customs, usages, understandings and beliefs, a number of statutes mixed up with customs and all covered over with a parasitic growth of legal decisions and political habits." [1] At no time has an attempt been made to collect and to reduce to writing this stupendous mass of scattered material, and no such attempt is likely ever to be made. "The English," as remarks the French critic Boutmy, "have left the different parts of their constitution where the waves of history have deposited them; they have not attempted to bring them together, to classify or complete them, or to make of it a consistent or coherent whole." [2]

## V. The Flexibility of the Constitution

**44. Aspects of Continuity and of Change.**—In pursuance of what has been said two observations, representing opposite aspects of the same truth, are pertinent. The first is that in respect to the principles and many of the practices of the English constitution it is pre-eminently true that, to employ a familiar phrase of Bishop Stubbs, the roots of the present lie deep in the past.[3] The second is that the English constitution is a living organism, so constantly undergoing modification that any description of it which may be attempted is likely to be subject to correction almost before it can be completed. At no time, as Mr. Freeman wrote, "has the tie between the present and the past been rent asunder; at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory." [4] On the contrary, each step in the growth of the constitutional system has been the natural consequence of some earlier step. Great changes, it is true, have been wrought. To mention but the most obvious illustration, autocratic kingship has been replaced by a parliamentary government based upon a thoroughgoing political democracy. None the less, transitions have been regularly so gradual, deference to tradition so habitual, and the disposition to cling to ancient names and forms, even when the spirit had changed, so deep-seated, that the constitutional history of England presents elements of continuity which cannot be paralleled in any other country of Europe.

The letter of a written constitution may survive through many decades unchanged, as has that of the Italian *Statuto* of 1848, and as

[1] J. Bryce, Flexible and Rigid Constitutions, in Studies in History and Jurisprudence (London and New York, 1901), No. 3.

[2] E. Boutmy, Studies in Constitutional Law: France—England—United States, trans. by E. M. Dicey (London, 1891), 6.

[3] Constitutional History of England, I., prefatory note.

[4] Growth of the English Constitution, 19.

did that of the American constitution between 1804 and 1865. No constitutional system, however, long stands still, and least of all one of the English variety, in which there exists but little of even the formal rigidity arising from written texts. Having no fixed and orderly shape assigned it originally by some supreme authority, the constitution of the United Kingdom has retained throughout its history a notably large measure of flexibility. It is by no means to-day what it was fifty years ago; fifty years hence it will be by no means what it is to-day. In times past changes have been accompanied by violence, or, at least, by extraordinary manifestations of the national will. Nowadays they are introduced through the ordinary and peaceful processes of legislation, of judicial interpretation, and of administrative practice. Sometimes, as in the instance of the recent overhauling of the status of the House of Lords, they are accompanied by heated controversy and widespread public agitation. Not infrequently, however, they represent inevitable and unopposed amplifications of existing law or practice and are taken note of scarcely at all by the nation at large.

**45. The Constituent Powers of Parliament.**—The principal means by which changes are wrought in the English constitution to-day is that of parliamentary enactment. It is to be observed that in Great Britain there is not, nor has there ever been, any attempt to draw a line of distinction between powers that are constituent and powers that are legislative. All are vested alike in Parliament, and in respect to the processes of enactment, repeal, and revision there is no difference whatsoever between a measure affecting the fundamental principles of the governmental system and a statute pertaining to the commonest subject of ordinary law. "Our Parliament," observes Mr. Anson, "can make laws protecting wild birds or shell-fish, and with the same procedure could break the connection of Church and State, or give political power to two millions of citizens, and redistribute it among new constituencies." [1] The keystone of the law of the constitution is, indeed, the unqualified omnipotence which Parliament possesses in the spheres both of constitution-making and of ordinary legislation. In Parliament is embodied the supreme will of the nation; and although from time to time that will may declare itself in widely varying and even inconsistent ways, at any given moment its pronouncements are conclusive.

**46. What are "Constitutional" Laws?**—From this unrestricted competence of Parliament arise two highly important facts. One of them is that the distinction between "constitutional" laws, on the one hand, and ordinary statutes, on the other, is neither so obvious nor so

[1] Law and Custom of the Constitution, 4th ed., I., 358.

essential as under most governmental systems. The concept, even, of constitutional law has developed but slowly among the English, and the phrase is as yet seldom employed in legal discussion. In the United States constitutional amendments or addenda, in so far at least as they assume written form, emanate from sources and by processes different from those that obtain in the enactment of ordinary statutes. In most continental nations the constituent process is at least somewhat different from that employed in the enactment of simple laws. And these specially devised processes are designed to emphasize the essential differentiation of the product from the handiwork of the ordinary legislative bodies. In Great Britain, however, there is, as has appeared, no difference of process, and the distinction between the law of the constitution and ordinary statute law is not infrequently all but impossible to trace. If it is to be traced at all, it must be derived from the circumstances of enactment. Some measures, e. g., the Habeas Corpus Act, the Act of Settlement, and the Parliament Act of 1911, relate obviously to the most fundamental and enduring aspects of state. Others just as clearly have to do with ephemeral and purely legislative concerns. Precisely where the line should be drawn between the two no man can say. It is, in the opinion of Mr. Bryce, because of this obstacle primarily that no attempt has been made to reduce the English constitution to the form of a single fundamental enactment.[1]

**47. All Parts of the Constitution subject to Amendment.**—In the second place, no portion whatsoever of the constitution is immune from amendment or abrogation at the hand of Parliament. So forcefully was the French observer De Tocqueville impressed with this fact that he went so far as to assert that there really is no such thing as an English constitution at all.[2] De Tocqueville wrote, however, from the point of view of one who conceives of a constitution as of necessity an "instrument of special sanctity, distinct in character from all other laws, and alterable only by a peculiar process, differing to a greater or less extent from the ordinary forms of legislation";[3] and this conception is recognized universally nowadays to be altogether inadequate. There is, in every proper sense, an English constitution. No small portion of it, indeed, is in written form. And it is worth observing that in practice there is tending to be established in England in our own day

[1] Studies in History and Jurisprudence, I., No. 3.

[2] "In England the Parliament has an acknowledged right to modify the constitution; as, therefore, the constitution may undergo perpetual changes, it does not in reality exist (*elle n'existe point*); the Parliament is at once a legislative and a constituent assembly." Œuvres Complètes; I., 166–167.

[3] Lowell, Government of England, I., 2.

some measure of that distinction between constituent and legislative functions which obtains in other countries. There is no disposition to strip from Parliament its constituent powers; but the feeling is gaining ground that when fundamental and far-reaching innovations are contemplated action ought not to be taken until after there shall have been an appeal to the nation through the medium of a general election at which the desirability of the proposed changes shall be submitted as a clear issue. The principle, broadly stated, is that Parliament ought to exercise in any important matter its constituent powers only under the sanction of direct popular mandate. It was essentially in deference to this principle that the elections of December, 1910, turning squarely upon the issue of the reform of the House of Lords, were ordered. Thus, while in numerous continental countries the distinction between constituent and legislative functions is being nowadays somewhat relaxed, in Great Britain there is distinctly a tendency to establish in a measure a differentiation in this matter which long has been in practice non-existent.

In effect, every measure of Parliament, of whatsoever nature and under whatsoever circumstances enacted, is "constitutional," in the sense that it is legally valid and enforceable. When an Englishman asserts of a measure that it is unconstitutional he means only that it is inconsistent with a previous enactment, an established usage, the principles of international law, or the commonly accepted standards of morality. Such a measure, if passed in due form by Parliament, becomes an integral part of the law of the land, and as such will be enforced by the courts. There is no means by which it may be rendered of no effect, save repeal by the same or a succeeding parliament. In England, as in European countries generally, the judicial tribunals are endowed with no power to pass upon the constitutional validity of legislative acts. Every such act is *ipso facto* valid, whether it relates to the most trivial subject of ordinary legislation or to the organic arrangements of the state; and no person or body, aside from Parliament itself, possesses a right to override it or to set it aside.[1]

[1] For brief discussions of the general nature of the English constitution see A. L. Lowell, Government of England, 2 vols. (New York, 1909), I., 1–15; T. F. Moran, Theory and Practice of the English Government (new ed., New York, 1908), Chap. 1; J. A. R. Marriott, English Political Institutions (Oxford, 1910), Chaps. 1, 2; J. Macy, The English Constitution (New York, 1897), Chaps. 1, 9; and S. Low, The Governance of England (London, 1904), Chap. 1. A suggestive characterization is in the Introduction of W. Bagehot, The English Constitution (new ed., Boston, 1873). A more extended and very incisive analysis is Dicey, Introduction to the Study of the Law of the Constitution, especially the Introduction and Chaps. 1–3, 13, 14–15.

# CHAPTER III

## THE CROWN AND THE MINISTRY

### I. The Crown: Legal Status and Privileges

**48. Contrasts of Theory and Fact.**—The government of the United Kingdom is in ultimate theory an absolute monarchy, in form a limited, constitutional monarchy, and in fact a thoroughgoing democracy.[1] At its head stands the sovereign, who is at the same time the supreme executive, a co-ordinate legislative authority (and, in theory, much more than that), the fountain of justice and of honor, the "supreme governor" of the Church, the commander-in-chief of the army and navy, the conservator of the peace, and the *parens patriae* and *ex officio* guardian of the helpless and the needy. In law, all land is held, directly or indirectly, of him. Parliament exists only by his will. Those who sit in it are summoned by his writ, and the privilege of voting for a member of the lower chamber is only a franchise, not a right independent of his grant. Technically, the sovereign never dies; there is only a demise of the crown, i. e., a transfer of regal authority from one person to another, and the state is never without a recognized head.

The assertions that have been made represent with substantial accuracy the ultimate theory of the status of the crown in the governmental system. In respect to the form and fact of that system as it actually operates, however, it would hardly be possible to make assertions that would convey a more erroneous impression. The breadth of the discrepancy that here subsists between theory and fact will be made apparent as examination proceeds of the organization and workings of the executive, the legislative, and the judicial departments of the government of the realm. It is necessary first of all, however, to give attention to certain of the more external aspects of the position which the monarch occupies.

[1] From this essential incongruity of theory, form, and fact arises the special difficulty which must attend any attempt to describe with accuracy and completeness the British constitutional system. In the study of every government the divergences of theory and fact must be borne constantly in mind, but nowhere are these divergences so numerous, so far-reaching, or so fundamental as in the government of the United Kingdom.

**49. Title to the Throne: the Act of Settlement, 1701.**—Since the Revolution of 1688 title to the English throne has been based solely upon the will of the nation as expressed in parliamentary enactment. The statute under which the succession is regulated is the Act of Settlement, passed by the Tory parliament of 1701, by which it was provided that, in default of heirs of William III. and Anne, the crown and all prerogatives thereto appertaining should "be, remain, and continue to the most Excellent Princess Sophia, and the heirs of her body, being Protestants." [1] Sophia, a granddaughter of James I., was the widow of the Elector of Hanover, and although in 1701 she was not first in the natural order of succession, she was first among the surviving heirs who were Protestants. It was by virtue of the act mentioned that, upon the death of Anne in 1714, the throne devolved upon the son of the German Electress (George I.). The present sovereign, George V., is the eighth of the Hanoverian dynasty. Although it would be entirely within the competence of Parliament to repeal the Act of Settlement and to vest the crown in a member of some house other than the Hanoverian, there is, of course, no occasion for such an act, and the throne may be expected to continue to pass from one member of the present royal family to another in strict accordance with the principles of heredity and primogeniture. The rules of descent are essentially identical with those governing the inheritance of real property at common law.[2] Regularly, the sovereign's eldest son, the Prince of Wales,[3] inherits. If he be not alive, the inheritance passes to his issue, male or female. If there be none, the succession devolves upon the sovereign's second son, or upon his issue; and in default thereof, upon the eldest son who survives, or his issue. If the vacancy be not supplied by or through, a son daughters and their issue inherit after a similar order. No Catholic may inherit, nor anyone marrying a Catholic; and by the Act of 1701 it was stipulated that every person who should attain the throne "shall join in communion with the

[1] The text of the Act of Settlement is printed in Stubbs, Select Charters, 528–531; Adams and Stephens, Select Documents, 475–479; and Gee and Hardy, Documents Illustrative of English Church History, 664–670. As safeguards against dangers which might conceivably arise from the accession of a foreign-born sovereign the Act stipulated (1) that no person who should thereafter come into possession of the crown should go outside the dominions of England, Scotland, or Ireland, without consent of Parliament, and (2) that in the event that the crown should devolve upon any person not a native of England the nation should not be obliged to engage in any war for the defense of any dominions or territories not belonging to the crown of England, without consent of Parliament.

[2] Lowell, Government of England, I., 17.

[3] This title was created by Edward I. in 1301. Its possession has never involved the exercise of any measure of political power.

Church of England as by law established." If after accession the sovereign should avow himself a Catholic, or should marry a Catholic, his subjects would be absolved from their allegiance. It is required, furthermore, that the sovereign shall take at his coronation an oath wherein the tenets of Catholicism are abjured. Until 1910 the phraseology of this oath, formulated as it was in a period when ecclesiastical animosities were still fervid,[1] was such as to be offensive not only to Catholics but to temperate-minded men of all faiths. By act of Parliament passed in anticipation of the coronation of George V., the language employed in the oath was made very much less objectionable. The sovereign is required now merely to declare "that he is a faithful Protestant and that he will, according to the true intent of the enactments which secure the Protestant succession to the throne of the Realm, uphold and maintain the said enactments to the best of his power according to law."

**50. Regencies.**—The age of majority of the sovereign is eighteen. The constitutions of most monarchical states contain more or less elaborate stipulations respecting the establishment of a regency in the event of the sovereign's minority or incapacitation. In Great Britain, on the contrary, the practice has been to make provision for each such contingency when it should arise. A regency can be created and a regent designated only by act of Parliament. Parliamentary enactments, however, become operative only upon receiving the assent of the crown, and it has sometimes happened that the sovereign for whom a regent was required to be appointed was incapable of performing any governmental act. In such a case, there has been resort usually to some legal fiction by which the appearance, at least, of regularity has been preserved. A regency act regularly defines the limits of the regent's powers and establishes specific safeguards in respect to the interests of both the sovereign and the nation.[2]

**51. Royal Privileges: the Civil List.**—The sovereign is capable of owning land and other property, and of disposing of it precisely as may any private citizen. The vast accumulations of property, however, which at one time comprised the principal source of revenue of the crown, have become the possession of the state, and as such are

[1] The words to be employed were prescribed originally in the Act for Establishing the Coronation Oath, passed in the first year of William and Mary. For the text see Robertson, Select Statutes, Cases, and Documents, 65–68. An historical sketch of some value is A. Bailey, The Succession to the English Crown (London, 1879).

[2] For the text of the Regency Act of 1811, passed by reason of the incapacitation of George III., see Robertson, Statutes, Cases and Documents, 171–182. For an excellent survey of the general subject see May and Holland, Constitutional History of England, I., Chap. 3.

administered entirely under the direction of Parliament. In lieu of the income derived formerly from land and other independent sources the sovereign has been accorded for the support of the royal household a fixed annual subsidy—voted under the designation of the Civil List—the amount of which is determined afresh at the beginning of each reign. The Civil List was instituted by an act of 1689 in which Parliament settled upon the king for the meeting of personal expenses, the payment of civil officers, and other charges, a stipulated sum, thus separating for the first time the private expenditures of the crown from the public outlays of the nation.[1] The sum given William III. was £700,000. George III., in return for a fixed Civil List, surrendered his interest in the hereditary revenues of the crown, and William IV. went further and, in return for a Civil List of £510,000 a year, surrendered not only the hereditary revenues but also a large group of miscellaneous and casual sources of income.[2] At the accession of Queen Victoria the Civil List was fixed at £385,000. The amount was comparatively small, but opportunity was taken at the time finally to transfer to Parliament the making of provision for all charges properly incident to the maintenance of the state. In addition to various annuities payable to the children of the royal family, the Civil List of Edward VII., established by Act of July 2, 1901, amounted to £470,000, of which £110,000 was appropriated to the privy purse of the king and queen, £125,000 to salaries and retiring allowances of the royal household, and £193,000 to household expenses. At the accession of George V., in 1910, the Civil List was continued in the sum of £470,000.[3]

The sovereign enjoys unrestricted immunity from political responsibility and from personal distraint. The theory of the law has long been that the king can do no wrong, which means that for his public acts the sovereign's ministers must bear complete responsibility and for his private conduct he may not be called to account in any court of law or by any legal process. He cannot be arrested, his goods cannot be distrained, and as long as a palace remains a royal residence no

[1] Under Charles II. Parliament began to appropriate portions of the revenue for specific purposes, and after 1688 this became the general practice. Throughout a century the proceeds of particular taxes were appropriated for particular ends. But in 1787 Pitt simplified the procedure involved by creating a single Consolidated Fund into which all revenues were turned and from which all expenditures were met.

[2] Accuracy requires mention of the fact that, by exception, the crown still enjoys the revenues of the Duchy of Lancaster and the Duchy of Cornwall, the latter being part of the appanage of the Prince of Wales.

[3] On the history of the Civil List see May and Holland, Constitutional History of England, I., 152–175.

sort of judicial proceeding can be executed in it. Strictly, the revenues are the king's, whence it arises that the king is himself exempt from taxation, though lands purchased by the privy purse are taxed. And there are numerous minor privileges, such as the use of special liveries and a right to the royal salute, to which the sovereign, as such, is regularly entitled.

## II. The Powers of the Crown

**52. Sources: the Prerogative.**—Vested in the crown is, in the last analysis, an enormous measure of authority. The sum total of powers, whether or not actually exercised by the sovereign immediately, is of two-fold origin. There are powers, in the first place, which have been defined, or conferred outright, by parliamentary enactment. Others there are, however—more numerous and more important—which rest upon the simple basis of custom or the Common Law. Those powers which belong to the statutory group are, as a rule, specific and easily ascertainable. But those which comprise the ancient customary rights of the crown, i. e., the prerogative, are not always possible of exact delimitation. The prerogative is defined by Dicey as "the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the crown." [1] The elements of it are to be ascertained, not from statutes but from precedents, and the sources of it, as enumerated by Anson, are (1) the residue of the executive power which the king in the early stages of English history possessed in all of the branches of government; (2) survivals of the power once accruing to the king as the feudal chief of the country; and (3) attributes with which the crown has been invested by legal theory, e. g., the attribute of perpetuity popularly expressed in the aphorism "the king never dies," and that of perfection of judgment, similarly expressed in the saying "the king can do no wrong." [2] The most considerable element in the prerogative is that which Anson first mentions, i. e., the power which the king has carried over, in the teeth of the popularization of the governmental system, from days when the royal authority was not hedged about as since the seventeenth century it has been. It is further to be observed that no inconsiderable portion of the royal powers as they exist to-day represent original prerogative worked over and delimited by parliamentary enactment, so that in many instances it becomes difficult to determine whether a given power exists by virtue of a statute, by which it is to be regarded as absolutely defined,

[1] Law of the Constitution (7th ed.), 420.
[2] Law and Custom of the Constitution, II., Pt. I., 3–5.

or by virtue of an anterior prerogative which may be capable of being stretched or interpreted more or less arbitrarily. Nominally, the sovereign still holds by divine right. At the head of every public writ to-day stand the words "George V., by the Grace of God of Great Britain and Ireland King." But no principle of the working constitution is more clearly established than that in accordance with which the prerogatives of the crown may be defined, restricted, or extended by the supreme legislative power. Among prerogatives once claimed and exercised, but long since rendered obsolete by prohibitive legislation may be mentioned those of imposing taxes without parliamentary consent, suspending or dispensing with laws, erecting tribunals not proceeding according to the ordinary course of justice, declaring forfeit the property of convicted traitors,[1] purveyance, pre-emption, and the alienation of crown lands at pleasure.

**53. Powers, Theoretical and Actual.**—It is not, however, the origin of the royal power, but rather the manner of its exercise, that fixes the essential character of monarchy in Great Britain to-day. The student of this phase of the subject is confronted at the outset with a paradox which has found convenient expression in the aphorism that the king reigns but does not govern. The meaning of the aphorism is that, while the sovereign is possessed of all of the inherent dignity of royalty, it is left to him actually to exercise in but a very restricted measure the powers which are involved in the business of government. Technically, all laws are made by the crown in parliament; all judicial decisions are rendered by the crown through the courts; all laws are executed and all administrative acts are performed by the crown. But in point of fact laws are enacted by Parliament independently; verdicts are brought in by tribunals whose immunity from royal domination is thoroughly assured; and the executive functions of the state are exercised all but exclusively by the ministers and their subordinates. One who would understand what English monarchy really is must take account continually both of what the king does and may do theoretically and of what he does and may do in actual practice. The matter is complicated further by the fact that powers once possessed have been lost, that others which have never been formally relinquished have so long lain unused that the question may fairly be debated whether they still exist, and that there never has been, nor is likely ever to be, an attempt to enumerate categorically or to define comprehensively the range of powers, either theoretical or actual.

**54. Executive Powers.**—Disregarding for the moment the means of

[1] Abolished by the Felony Act of 1870.

their actual exercise, the powers of the crown to-day may be said to fall into two principal groups. The first comprises those which are essentially executive in character; the second, those which are shared with the two houses of Parliament, being, therefore chiefly legislative. The first group is distinctly the more important. It includes: (1) the appointment, directly or indirectly, of all national public officers, except some of the officials of the parliamentary chambers and a few unimportant hereditary dignitaries; (2) the removal, upon occasion, of all appointed officers except judges, members of the Council of India, and the Comptroller and Auditor General; (3) the execution of all laws and the supervision of the executive machinery of the state throughout all of its branches; (4) the expenditure of public money in accordance with appropriations voted by Parliament; (5) the pardoning of offenders against the criminal law, with some exceptions, either before or after conviction;[1] (6) the granting, in so far as not prohibited by statute, of charters of incorporation; (7) the creating of all peers and the conferring of all titles and honors; (8) the coining of all money; (9) the summoning of Convocation and, by reason of the headship of the Established Church, the virtual appointment of the archbishops, bishops, and most of the deans and canons; (10) the supreme command of the army and navy, involving the raising and control of the armed forces of the nation, subject to such conditions only as Parliament may impose; (11) the representing of the nation in all of its dealings with foreign powers, including the appointment of all diplomatic and consular agents and the negotiation and conclusion of peace; and (12) the exercise, largely under statutory authority conferred within the past half-century, of supervision or control in respect to local government, education, public health, pauperism, housing, and a wide variety of other social and industrial interests.

**55. The Composition of the Executive.**—The executive branch of the government, through whose agency these powers are exercised, consists of the sovereign, the ministry, and the entire hierarchy of administrative officials reaching downwards from the heads of departments and the under-secretaries at London through the several grades of clerks to the least important revenue and postal employees. There are various points of view from which the chief of the executive may be conceived of as the sovereign, the prime minister, the ministry collectively, or the king and ministry conjointly. So far as executive func-

[1] This power, in practice, is seldom exercised. The Act of Settlement prescribed that "no pardon shall be pleadable to an impeachment by the Commons in parliament."

tions go, the sovereign, in law, is very nearly as supreme as in the days of personal and absolute monarchy. The ministers are but his advisers, the local administrative authorities his agents. The government is conducted wholly in his name. In practice, however, supreme executive acts of the kinds that have been mentioned are performed by the ministers; or, if performed by the crown immediately, will not be undertaken without the ministers' knowledge and assent. The ministers, and not the sovereign, may be held to account by parliament for every executive act performed, and it is but logical that they should control the time and tenor of such acts. It falls very generally to the prime minister to speak for and otherwise represent the ministerial group. On the whole, however, it accords best with both law and fact to consider the executive under the working constitution as consisting of the crown as represented and advised by the ministry.

**56. The Crown and Legislation.**—The second general group of powers lodged in the crown comprises those which relate to legislation. Technically, all legislative authority is vested in "the king in parliament," by which is meant the king acting in collaboration with the two houses. Parliament transacts business only during the pleasure of the crown. The crown summons and prorogues the houses, and it is empowered at any time to dissolve the House of Commons. No parliamentary act, furthermore, is valid without the crown's assent. It is on the legislative, rather than the executive side, none the less, that the crown has lost most heavily in actual authority. There was a time when the crown possessed inherent law-making power and through the agency of proclamations and ordinances contributed independently to the body of enforceable law. To-day the sovereign may exercise no such power, save alone in the crown colonies. It is true that ordinances with the force of law are still issued, and that their number and importance tend steadily to be increased. But in all cases these ordinances have been, and must be, authorized specifically by statute. As "statutory orders" they emanate from a delegated authority purely and bear no relation to the ancient ordinance by prerogative. The king may not even, by virtue of any inherent power, promulgate ordinances in completion of parliamentary statutes—the sort of thing which the French president, the Italian king, and virtually every continental ruler may do with full propriety. Of his own authority, furthermore, the sovereign may not alter by one jot or tittle the law of the land. There was a time when the crown claimed and exercised the right to suspend, or to dispense with, laws which had been duly enacted and put in operation. But this practice was forbidden

definitely in the Bill of Rights, and no sovereign since the last Stuart has sought to revive the prerogative. Still another aspect of the ancient participation by the king in the legislative function was the influencing of the composition of the House of Commons through the right to confer upon boroughs the privilege of electing members. This right, never expressly withdrawn, is regarded now as having been forfeited by disuse. Finally, the power to withhold assent from a measure passed in Parliament has not been exercised since the days of Queen Anne,[1] and while legally it still exists, it is conceded for all practical purposes to have been extinguished.

**57. Principles Governing the Actual Exercise of Powers.**—After full allowances have been made, the powers of the British crown to-day comprise a sum total of striking magnitude. "All told," says Lowell, "the executive authority of the crown is, in the eye of the law, very wide, far wider than that of the chief magistrate in many countries, and well-nigh as extensive as that now possessed by the monarch in any government not an absolute despotism; and although the crown has no inherent legislative power except in conjunction with Parliament, it has been given by statute very large powers of subordinate legislation. . . . Since the accession of the House of Hanover the new powers conferred upon the crown by statute have probably more than made up for the loss to the prerogative of powers which have either been restricted by the same process or become obsolete by disuse. By far the greater part of the prerogative, as it existed at that time, has remained legally vested in the crown, and can be exercised to-day." [2]

The next fundamental thing to be observed is that the extended powers here referred to are exercised, not by the king in person, but by ministers with whose choosing the sovereign has but little to do and over whose acts he has only an incidental and extra-legal control. Underlying the entire constitutional order are two principles whose operation would seem to reduce the sovereign to a sheer nonentity. The first is that the crown shall perform no important governmental act whatsoever save through the agency of the ministers. The second is that these ministers shall be responsible absolutely to Parliament for every public act which they perform. From these principles arises the fiction that "the king can do no wrong," which means legally that the sovereign cannot be adjudged guilty of wrongdoing (and that therefore no proceedings may be instituted against him), and politically

[1] In 1707, when the Queen refused her assent to a bill for settling the militia in Scotland.

[2] Government of England, I., 23, 26.

that the ministers are responsible, singly in small affairs and conjointly in more weighty ones, for everything that is done in the crown's name. "In a constitutional point of view," writes an English authority, "so universal is the operation of this rule that there is not a moment in the king's life, from his accession to his demise, during which there is not some one responsible to Parliament for his public conduct; and there can be no exercise of the crown's authority for which it must not find some minister willing to make himself responsible." [1] In continental countries the responsibility of ministers is established very commonly by specific and written constitutional provision. In Great Britain it exists by virtue simply of a group of unwritten principles, or conventions, of the constitution; but it is there none the less real. In the conduct of public affairs the ministry must conform to the will of the majority in the House of Commons; otherwise the wheels of government would be blocked. And from this it follows that the crown is obliged to accept, with such grace as may be, the measures which the ministry, working with the parliamentary majority, formulates and for which it stands ready to shoulder responsibility. It is open to the king, of course, to dissuade the ministers from a given course of action. But if they cannot be turned back, and if they have the support of a parliamentary majority, there is nothing that the sovereign can do save acquiesce.

**58. Appointment of Ministers.**—In the naming of a new premier, following the retirement of a ministry, the king is legally unhampered; but here again in practice he is bound to designate the recognized leader of the dominant party, and so to pursue a course in which there is left no room for the exercise of discretion. Only when there is no clearly recognized leader, or when circumstances compel the formation of a coalition ministry, is there a real opportunity for the sovereign to choose a premier from a number of more or less available men.[2] In the appointment of the remaining ministers, and of all persons whose offices are regarded as political, the crown yields uniformly to the judgment of the premier. The King's Speech, on the opening of Parliament, is written by the ministers; all public communications of the crown pass through their hands; peers are created and honors bestowed in accord with their advice; measures are framed and executive acts are undertaken by them, sometimes without the sovereign's knowledge and occasionally even contrary to his wishes.

[1] Todd, Parliamentary Government in England, I., 81.

[2] This sort of situation presented itself several times during the reign of Queen Victoria, but in general it is exceptional.

## III. The Importance and Strength of the Monarchy

**59. The Real Authority and Service of the Crown.**—It would be an error, however, to conclude that kingship in England is unimportant, or even that the power wielded in person by the crown is negligible. On the contrary, the uses served by the crown are indisputable and the influence exerted upon the course of public affairs may be decisive. The sovereign, in the words of Bagehot, has three rights—the right to be consulted, the right to encourage, and the right to warn. "A king of great sense and sagacity," it is added, "would want no others." [1] Despite the fact that during upwards of two hundred years the sovereign has not attended the meetings of the cabinet, and so is deprived of the opportunity of wielding influence directly upon the deliberations of the ministers as a body, the king keeps in close touch with the premier, and cabinet councils at which important lines of policy are to be formulated are preceded not infrequently by a conference in which the subject in hand is threshed out more or less completely by king and chief minister. Merely because the ancient relation has been reversed, so that now it is the king who advises and the ministry that arrives at decisions, it does not follow that the advisory function is an unimportant thing. Queen Victoria many times wielded influence of a decisive nature upon the public measures of her reign, especially in respect to the conduct of foreign relations. The extent of such influence cannot be made a matter of record, because the ministers are in effect bound not to publish the fact that a decision upon a matter of state has been taken at the sovereign's instance. It is familiarly known, however—to cite a recent illustration—that Edward VII. approved and encouraged the Haldane army reforms, that he sought to dissuade the House of Lords from the rejection of the Lloyd-George budget of 1909, and that he discouraged the raising, in any form, of the issue of the reconstitution of the upper chamber. In other words while, as a constitutional monarch content to remain in the background of political controversy, the late king not only had opinions but did not hesitate to make them known; and in the shaping and execution of the Liberal programme his advice was at times a factor of importance.[2]

[1] The English Constitution (rev. ed.), 143.

[2] The most satisfactory estimate of the political and governmental activities of Edward VII. is contained in Mr. Sidney Lee's memoir of the king, printed in the Dictionary of National Biography, Second Supplement (London and New York, 1912), I., 546–610.

**60. Why Monarchy Survives.**—Monarchy in Great Britain is a solid and, so far as can be foreseen, a lasting reality. Throughout the tempestuous years 1909–1911, when the nation was aroused as it had not been in generations upon the issue of constitutional reform, and when every sort of project was being warmly advocated and as warmly opposed, without exception every suggested programme took for granted the perpetuation of the monarchy as an integral part of the governmental system. In the general bombardment to which the hereditary House of Lords was subjected hereditary kingship wholly escaped. The reasons are numerous and complex. They arise in part, though by no means so largely as is sometimes imagined, from the fact that monarchy in England is a venerable institution and the innate conservatism of the Englishman, while permitting him from time to time to regulate and modify it, restrains him from doing anything so revolutionary as to abolish it. That upon certain conspicuous occasions, as in the Cromwellian period, and again in 1688, kingship has owed its very life to the conservative instinct of the English people is well enough known to every student of history. But to-day, as ever, the institution rests upon a basis very much more substantial than a mere national predilection. Monarchy remains impregnably entrenched because the crown, in addition to comprising an accustomed feature of the governmental economy, fulfills specific ends which are recognized universally to be eminently worth while, if not indispensable. As a social, moral, and ceremonial agency, and as a visible symbol of the unity of the nation, king and court occupy an immeasurable place in the life and thought of the people; and even within the domain of government, to employ the figure of Lowell, if the crown is no longer the motive power of the ship of state, it is the spar on which the sail is bent, and as such it is not only a useful but an essential part of the vessel.[1] The entire governmental order of Great Britain hinges upon the parliamentary system, and nowhere has that system been reduced to satisfactory operation without the presence of some central, but essentially detached, figure, whether a king or, as in France, a president with the attributes of kingship. It is fundamentally because the English people have discerned that kingship is not necessarily incompatible with popular government that the monarchy has persisted. If royalty had been felt to stand inevitably in the path of democratic progress, it is inconceivable that all the forces of tradition could have pulled it through the past seventy-five or eighty years. As it is, while half a century ago there was in the country a small republican group which was fond of urging that the monarchy was but a source of

[1] Government of England, I., 49.

needless expense, to-day there is hardly a vestige, in any grade of society, of anti-monarchical sentiment.[1]

## IV. Privy Council, Ministry, and Cabinet

**61. The Privy Council.**—One who would understand the modes by which the powers of the crown are in practice exercised must begin by fixing firmly in mind the nature and relations of three distinct but closely interrelated institutions, the Privy Council, the ministry, and the cabinet. As has appeared, the Privy Council through a long period of English history comprised the body of men who advised the crown and assisted to some extent in the supervision of administration. The number of councillors from time to time varied widely, but it tended constantly to be too large to admit of the requisite despatch and secrecy, and by reason principally of this consideration the crown fell into the custom of selecting as advisers a group of persons less numerous, and perhaps more trustworthy, than the whole body of public functionaries collectively designated as the Privy Council. Thus arose the cabinet, which throughout its entire history has been only an inner circle, unknown to the law, of the older and larger body. The Privy Council survives to-day, and in both law and theory it still is the advisory body of the crown. A cabinet member possesses authority and is known to the law only as a privy councillor. In point of fact, however, the Privy Council, once highly influential in affairs of state, is now, as such, all but powerless. Such portions of the dignity of its ancient place in the constitution as remain to it are of a purely formal and ceremonial nature. It holds no meetings of a deliberative character, and although legally its action is still essential to many public measures, as the preparation of proclamations and of orders in council, this action may be taken by as few as three persons.[2] All cabinet members are members of the Council, so that even one-fifth or one-sixth of the cabinet group is competent to meet every legal re-

[1] The best brief discussions of the position of the crown in the governmental system are Lowell, Government of England, I., Chap. 1; Moran, English Government, Chaps. 2–3; Marriott, English Political Institutions, Chap. 3; Macy, English Constitution, Chap. 5; and Low, Governance of England, Chaps. 14–15. More extended treatment of the subject will be found in Anson, Law and Custom of the Constitution, II., Pt. 1, Chaps 1 and 4; Todd, Parliamentary Government in England, I., Pt. 2; Bagehot, English Constitution, Chaps. 2–3; H. D. Traill, Central Government, Chap. 1. Mention may be made of N. Caudel, Le souverain anglais, in *Annales des Sciences Politiques*, July, 1910, and J. Bardoux, Le pouvoir politique de la couronne anglaise, in *Revue des Deux Mondes*, May 15, 1911.

[2] On the nature of orders in council see Anson, Law and Custom of the Constitution, II., Pt. 1, 147–149.

quirement imposed upon the Council as a whole.[1] All councillors are appointed by the crown and continue in office for life or until dismissed. Their number is unlimited, and the only qualification necessary for appointment is British nativity. Members fall into three groups: (1) members of the cabinet; (2) holders of certain important non-political offices who by custom are entitled to appointment; (3) persons eminent in politics, literature, law, or science, or by reason of service rendered the crown, upon whom the dignity is conferred as an honorary distinction. Members bear regularly the title of Right Honorable. The President of the Council, designated by the crown, takes rank in the House of Lords next after the Chancellor and Treasurer.[2]

**62. Ministry and Cabinet..**—Another governmental group which, like the Privy Council, differs from the cabinet while containing it, is the ministry. The ministry comprises a large and variable body of functionaries, some of whom occupy the principal offices of state and divide their efforts between advising the crown, i. e., formulating governmental policy, and administering the affairs of their respective departments, and others of whom, occupying less important executive positions, do not possess, save indirectly, the advisory function. The first group comprises, approximately at least, the cabinet. Most heads of departments are regularly and necessarily in the cabinet. A few are in it as a rule, though not invariably. A few, still less important, may be, but are not likely to be, admitted to it. And, finally, a large number of parliamentary under-secretaries, party "whips," and officers of the royal household are certain not to be admitted.[3]

## V. The Executive Departments

In respect to both origin and legal status the executive departments of the central government of Great Britain exhibit little of the conformity to type which characterizes their counterparts in the logical and self-consistent governmental systems of the majority of con-

[1] It is to be observed, however, that despite the transfer of the business devolving formerly upon the Council into the hands of the specially constituted departments of government, the Council does still, through the agency of its committees, perform a modicum of actual service. Of principal importance among the committees is the Judicial Committee, which hears appeals in ecclesiastical cases and renders final verdict in all appeals coming from tribunals outside the United Kingdom. See p. 175.

[2] Traill, Central Government, Chap. 12.

[3] On the relations of cabinet and ministry see Lowell, Government of England, I., Chap. 3.

tinental countries. Under the pressure, however, of custom and of parliamentary control, they have been reduced to essentially a common style of organization and a common mode of administrative procedure. In virtually every instance the department is presided over by a single responsible minister, assisted as a rule by one or more parliamentary under-secretaries and, more remotely, by a greater or lesser body of non-political officials who carry on the actual work of the department and whose tenure is not affected by the political fortunes of their chiefs.

**63. The Treasury.**—Among the numerous departments, some represent survivals of great offices of state of an earlier period, some are offshoots of the ancient secretariat, and some comprise boards and commissions established in days comparatively recent. In the first group fall the offices of the Lord High Treasurer, the Lord High Chancellor, and the Lord High Admiral. From the early sixteenth century to the death of Queen Anne the principal official of the Treasury was the Lord High Treasurer. Since 1714, however, the office has been regularly in commission. The duties connected with it have been intrusted to a board composed of certain Lords of the Treasury, and no individual to-day bears the Lord High Treasurer's title. When a ministry is made up the group of Treasury Lords is renewed, and as a rule the post of First Lord is assumed by the premier. In point of fact, however, the board is never called together, some of its members have no actual connection whatsoever with the Treasury, and the functions of this most important of all departments are in practice exercised by the Chancellor of the Exchequer, assisted by the Junior Lords and the under-secretaries. The Exchequer, i. e., the department concerned principally with the collection of the taxes, is in fact, though not in name, a branch of the Treasury Board. Within the Treasury, and immediately under the direction of the Chancellor, is drawn up the annual budget, embodying a statement of the contemplated expenditures of the year and a programme of taxation calculated to produce the requisite revenue. The Treasury exercises general control over all other departments of the public service, e. g., the Post-office and the Board of Customs, in which public money is collected or expended.[1]

**64. The Admiralty Board and the Lord High Chancellorship.**—A second of the ancient offices of state which survives only in commis-

[1] On the organization and workings of the Treasury see Lowell, Government of England, I., Chap. 5; Dicey, Law of the Constitution, Chap. 10; Anson, Law and Custom of the Constitution, II., Pt. 1, 173–190; Traill, Central Government, Chap. 3.

sion is that of the Lord High Admiral. The functions of this important post devolve to-day upon an Admiralty Board, consisting strictly of a First Lord, four Naval Lords (naval experts, usually of high rank), and a Civil Lord, with whom, however, sit a number of parliamentary and permanent secretaries. The First Lord is invariably a member of the cabinet, and while legally the status of the six Lords is identical, in practice the position of the First Lord approximates closely that of the minister of marine in continental countries. Unlike the Treasury Lords, the Lords of the Admiralty actually meet, and transact business.

The third of the executive offices which comprise survivals from early times is that of the Lord High Chancellor. There is in Great Britain no single official who fills even approximately the position occupied elsewhere by a minister of justice or an attorney-general, but the most important of several officers who supply the lack is the Lord Chancellor. "The greatest dignitary," says Lowell, "in the British government, the one endowed by law with the most exalted and most diverse functions, the only great officer of state who has retained his ancient rights, the man who defies the doctrine of the separation of powers more than any other personage on earth, is the Lord Chancellor." [1] The Lord Chancellor is invariably a member of the Cabinet. He is the chief judge in the High Court of Justice and in the Court of Appeal. He appoints and removes the justices of the peace and the judges of the county courts and wields large influence in appointments to higher judicial posts. He affixes the Great Seal where it is required to give validity to the acts of the crown and he performs a wide variety of other more or less formal services. Finally, it is the Lord High Chancellor who presides in the House of Lords.

**65. The Five Secretaries of State.**—Five of the great departments to-day represent the product of a curious evolution of the ancient secretariat of state. Originally there was but a single official who bore the designation of secretary of state. In the earlier eighteenth century a second official was added, although no new office was created. At the close of the century a third was added, after the Crimean War a fourth, and after the Indian Mutiny of 1857 a fifth. There are now, accordingly, five "principal secretaries of state," all in theory occupying the same office and each, save for a few statutory restrictions, competent legally to exercise the functions of any or all of the others. In practice each of the five holds strictly to his own domain. The group comprises: (1) the Secretary of State for the Home Department, assisted by a parliamentary under-secretary and a large staff of permanent officials, and possessing functions of a highly miscellaneous

[1] Government of England, I., 131.

sort—those, in general, belonging to the ancient secretariat which have not been assigned to the care of other departments; (2) the Secretary of State for Foreign Affairs, at the head of a department which not only conducts foreign relations but administers the affairs of such protectorates as are not closely connected with any of the colonies; (3) the Secretary of State for the Colonies; (4) the Secretary of State for War; and (5) the Secretary of State for India, assisted by a special India Council of ten to fourteen members.

**66. The Administrative Boards.**—The third general group of departments comprises those which have arisen through the establishment in comparatively recent years of a variety of administrative boards or commissions. Two—the Board of Trade and the Board of Education—originated as committees of the Privy Council. Three others—the Board of Agriculture, the Board of Works, and the Local Government Board—represent the development of administrative commissions not conceived of originally as vested with political character. All are in effect independent and co-ordinate governmental departments. The composition and functions of the Board of Trade are regulated by order in council at the opening of each reign, but the character of the other four is determined wholly by statute. At the head of each is a president (save that the chief of the Board of Works is known as First Commissioner), and the membership embraces the five secretaries of state and a variable number of other important dignitaries. This membership, however, is but nominal. No one of the Boards actually meets, and the work of each is performed entirely by its president, with, in some instances, the assistance of a parliamentary under-secretary. "In practice, therefore, these boards are legal phantoms that provide imaginary colleagues for a single responsible minister." [1] Very commonly the presidents are admitted to the cabinet, but sometimes they are not.[2]

## VI. The Cabinet: Composition and Character

**67. Regular and Occasional Members.**—The cabinet comprises a variable group of the principal ministers of state upon whom devolves singly the task of administering the affairs of their respective departments and, collectively, that of shaping the policy and directing the conduct of the government as a whole. The position occupied by the

[1] Lowell, Government of England, I., 84.

[2] On the organization and workings of the executive departments see Lowell, *op. cit.*, I., Chaps. 4–6; Marriott, English Political Institutions, Chap. 5; Anson, Law and Custom of the Constitution, II., Pt. 1, Chap. 3; Traill, Central Government, Chaps. 3–11.

cabinet in the constitutional system is anomalous, but transcendently important. As has been pointed out, the cabinet as such is unknown to English law. Legally, the cabinet member derives his administrative function from the fact of his appointment to a ministerial post, and his advisory function from his membership in the Privy Council. The cabinet exists as an informal, extra-legal ministerial group into whose hands, through prolonged historical development, has fallen the supreme direction of both the executive and the legislative activities of the state. The composition of the body is determined largely by custom, but in part by passing circumstance. Certain ministerial heads are invariably included: the First Lord of the Treasury, the Lord Chancellor, the Chancellor of the Exchequer, the five Secretaries of State, and the First Lord of the Admiralty. Two dignitaries who possess no administrative function, i. e., the Lord President of the Privy Council and the Lord Privy Seal,[1] are likewise always included. Beyond this, the make-up of the cabinet group is left to the discretion of the premier. The importance of a given office at the moment and the wishes of the appointee, together with general considerations of party expediency, may well enter into a decision relative to the seating of individual departmental heads. In recent years the presidents of the Board of Trade, the Board of Education, and the Local Government Board have regularly been included, together with the Lord Lieutenant or the Chief Secretary for Ireland.[2] The Secretary for Scotland and the Chancellor of the Duchy of Lancaster are usually included; the Postmaster-General and the President of the Board of Agriculture frequently, and the First Commissioner of Works and the Lord Chancellor for Ireland occasionally.

**68. Increasing Size.**—The trend is distinctly in the direction of an increase in the size of the body. The more notable cabinets of the eighteenth century contained, as a rule, not above seven to ten members. In the first half of the nineteenth century the number ran up to thirteen or fourteen, and throughout the Gladstone-Disraeli period it seldom fell below this level. The second Salisbury cabinet, at its fall in 1892, numbered seventeen, and when, following the elections of 1900, the third Salisbury government was reconstructed, the cabinet

[1] The functions of this official are but nominal. In 1870 Sir Charles Dilke moved to abolish the office as useless, but Gladstone urged the desirability of having in the cabinet at least one man who should not be burdened with the management of a department, and the motion was lost. The presidency of the Council is a post likewise of dignity but of meager governmental power or responsibility.

[2] In theory the powers of the executive are exercised in Ireland by the Lord Lieutenant, but in practice they devolve almost entirely upon the nominally inferior official, the Chief Secretary.

attained a membership of twenty.[1] The Balfour cabinet of 1905 and the succeeding Campbell-Bannerman cabinet likewise numbered twenty. The increase is attributable to several causes, especially the pressure which comes from ambitious statesmen for admission to the influential circle, the growing necessity of according representation to varied elements and interests within the dominant party, the multiplication of state activities which call for direction under new and important departments, and the disposition to accord to every considerable branch of the administrative system at least one representative. The effect is to produce a certain unwieldiness, to avoid which, it will be recalled, the cabinet was originally instituted. Only through the domination of the cabinet by a few of its most influential members can expeditiousness be preserved, and during recent years there has been a tendency toward the differentiation of an inner circle which shall bear to the whole cabinet a relation somewhat analogous to that which the cabinet now bears to the ministry. Development in this direction is viewed apprehensively by many people who regard that the concentration of power in the hands of an "inner cabinet" might well fail to be accompanied by a corresponding concentration of recognized responsibility. During more than a decade criticism of the inordinate size of the cabinet group has been voiced freely upon numerous occasions and by many observers.[2]

**69. Appointment of the Premier.**—When a new cabinet is to be made up the first step is the designation of the prime minister. Legally the choice rests with the crown, but considerations of practical politics leave, as a rule, no room whatsoever for the exercise of discretion. The crown sends as a matter of course for the statesman who is able to command the support of the majority in the House of Commons. If the retiring ministry has "fallen," i. e., has lost its parliamentary majority, the new premier is certain to be the recognized leader of the party which formerly has played the rôle of opposition. If there has not occurred a shift in party status, the premiership will be bestowed upon some one of the colleagues, at least upon one of the fellow-partisans, of the retiring premier, nominated, if need be, by the chiefs of the party. Thus, when in 1894 Gladstone retired from office by reason of physical infirmity, the Liberal leaders in the two houses conferred upon the question as to whether he should be succeeded by

[1] Lord Salisbury at this point retired from the Foreign Office, which was assigned to Lord Lansdowne, and assumed in conjunction with the premiership the less exacting post of Lord Privy Seal.

[2] Lowell, Government of England, I., 59; Anson, Law and Custom of the Constitution, II., Pt. 1, 211.

Sir William Vernon-Harcourt or by Lord Rosebery. They recommended Lord Rosebery, who was forthwith appointed by the Queen. If, by any circumstance, the premiership should fall to the Opposition at a moment when the leadership of this element is in doubt, the crown would be guided, similarly, by the informally expressed will of the more influential party members. While, therefore, the appointment of the prime minister remains the sole important governmental act which is performed directly by the sovereign, even here the substance of power has been lost and only the form survives.

**70. Selection of Other Members.**—The remaining members of the cabinet are selected by the premier, in consultation, as a rule, with leading members of the party. Technically, what happens is that the first minister places in the hands of the sovereign a list of the men whom he recommends for appointment to the principal offices of state. The crown accepts the list and there appears forthwith in the London Gazette an announcement to the effect that the persons named have been chosen by the crown to preside over the several departments. Officially, there is no mention of the "cabinet." In the selection of his colleagues the premier theoretically has a free hand. Practically he is bound by the necessity of complying with numerous principles and of observing various precedents and practical conditions. Two principles, in particular, must be adhered to in determining the structure of every cabinet. All of the members must have seats in one or the other of the two houses of Parliament, and all must be identified with the party in power, or, at the least, with an allied political group. There was a time, when the personal government of the king was yet a reality, when the House of Commons refused to admit to its membership persons who held office under the crown, and this disqualification found legal expression as late as the Act of Settlement of 1701.[1] With the ripening of parliamentary government in the eighteenth century, however, the thing that once had been regarded properly enough as objectionable became a matter of unquestionable expediency, if not a necessity. When once the ministers comprised the real executive of the nation it was but logical that they should be authorized to appear on the floor of the two houses to introduce and advocate measures and to explain the acts of the government. Ministers had occupied regularly seats in the upper chamber, and not only was all objection to their occupying seats in the lower chamber removed, but by custom it came to be an inflexible rule that cabinet officers, and indeed the ministers generally, should be drawn exclusively from the membership of the two

[1] The clause of this measure which bore upon the point in hand was repealed, however, before it went into operation.

houses.[1] Under provision of an act of 1707 it is still obligatory upon commoners who are tendered a cabinet appointment, with a few exceptions, to vacate their seats and to offer themselves to their constituents for re-election. But re-election almost invariably follows as a matter of course and without opposition.[2] It is to be observed that there are two expedients by which it is possible to bring into the cabinet a desirable member who at the time of his appointment does not possess a seat in Parliament. The appointee may be created a peer; or he may stand for election to the Commons and, winning, qualify himself for a cabinet post.

**71. Distribution Between the Houses of Parliament.**—Since the middle of the eighteenth century the tenure of the premiership has been divided approximately equally between peers and commoners, but the apportionment of cabinet seats between the two houses has been extremely variable. The first cabinet of the reign of George III. contained fourteen members, thirteen of whom had seats in the House of Lords, and, in general, throughout the eighteenth century the peers were apt greatly to preponderate. With the growth in importance of the House of Commons, however, and especially after the Reform Act of 1832, the tendency was to draw an ever increasing proportion of the cabinet officers from the chamber in which lies the storm center of English politics. By legal stipulation one of the secretaries of state must sit in the upper house; and the Lord Privy Seal, the Lord Chancellor, and the Lord President of the Council are all but invariably peers. Beyond this, there is no positive requirement, in either law or custom. In the ministries of recent times the number of peers and of commoners has generally been not far from equal. To fill the various posts the premier must bring together the best men he can secure—not necessarily the ablest, but those who will work together most effectively—with but secondary regard to the question of whether they sit in the one or the other of the legislative houses. A department whose chief sits in the Commons is certain to be represented in the Lords by an under-secretary or other spokesman, and *vice versa*.[3]

[1] The one notable instance in which this rule has been departed from within the past seventy-five years was Gladstone's tenure of the post of Secretary of State for the Colonies during the last six months of the Peel administration in 1846.

[2] On the reasons for the requirement of re-election and the movement for the abolition of the requirement see Moran, The English Government, 108–109.

[3] In France and other continental countries in which the parliamentary system obtains an executive department is represented in Parliament by its presiding official only. But this official is privileged, as the English minister is not, to appear and to speak and otherwise participate in proceedings on the floor of either chamber.

**72. Political Solidarity.**—A second fundamental principle which dominates the structure of the cabinet is that which requires that the members be men of one political faith. William III. sought to govern with a cabinet in which there were both Whigs and Tories, but the result was confusion and the experiment was abandoned. Except during the ascendancy of Walpole, the cabinets of the eighteenth century very generally embraced men of more or less diverse political affiliations, but gradually the conviction took root that in the interest of unity and efficiency the political solidarity of the cabinet group is indispensable. The last occasion upon which it was proposed to make up a cabinet from utterly diverse political elements was in 1812. The scheme was rejected, and from that day to this cabinets have been composed regularly, not necessarily of men identified with a common political party, but at least of men who are in substantial agreement upon the larger questions of policy and who have expressed their willingness to co-operate in the carrying out of a given programme of action. The fundamental requisite is unity. A Liberal Unionist may occupy a post in a Conservative cabinet and a Laborite in a Liberal administration, but he may not oppose the Government upon any important question and expect to continue a member of it, save by the express permission of the premier. It is the obligation of every cabinet member to agree, or to appear to agree, with his colleagues. If he is unable to do this, no course is open to him save resignation.

**73. Other Considerations Determining Appointment.**—In the selection of his colleagues the premier works under still other practical restrictions. One of them is the well-established rule that surviving members of the last cabinet of the party, in so far as they are in active public life and desirous of appointment, shall be given prior consideration. Members of the party, furthermore, who have come into special prominence and influence in Parliament must usually be included. In truth, as Bagehot points out, the premier's independent choice is apt to find scope not so much in the determination of the cabinet's personnel as in the distribution of offices among the members selected; and even here he will often be obliged to subordinate his wishes to the inclinations, susceptibilities, and capacities of his prospective colleagues. In the expressive simile of Lowell, the premier's task is "like that of constructing a figure out of blocks which are too numerous for the purpose, and which are not of shapes to fit perfectly together." [1]

[1] Government of England, I., 57. See MacDonaugh, The Book of Parliament, 148–183.

## VII. The Cabinet in Action

**74. Ministerial Responsibility.**—In its actual operation the English cabinet system involves the unvarying application of three principles: (1) the responsibility of cabinet ministers to Parliament; (2) the non-publicity of cabinet proceedings; and (3) the close co-ordination of the cabinet group under the leadership of the premier. Every minister whether or not in the cabinet, is responsible individually to Parliament, which in effect means to the House of Commons, for all of his public acts. If he is accorded a vote of censure he must retire. In the earlier eighteenth century the resignation of a cabinet officer did not affect the tenure of his colleagues, the first of cabinets to retire as a unit being that of Lord North in 1782. Subsequently, however, the ministerial body so developed in compactness that in relation to the outside world, and even to Parliament, the individual officer came to be effectually subordinated to the group. Not since 1866 has a cabinet member retired singly in consequence of an adverse parliamentary vote. If an individual minister falls into serious disfavor one of two things almost certainly happens. Either the offending member is persuaded by his colleagues to modify his course or to resign before formal parliamentary censure shall have been passed, or the cabinet as a whole rallies to the support of the minister in question and stands or falls with him. This is but another way of saying that, in practice, the responsibility of the cabinet is collective rather than individual, a condition by which the seriousness and effectiveness of it are vastly increased. This responsibility covers the entire range of acts of the executive department of the government, whether regarded as acts of the crown or of the ministers themselves, and it constitutes the most distinctive feature of the English parliamentary system. Formerly the only means by which ministers could be held to account by Parliament was that of impeachment. With the development, however, of the principle of ministerial responsibility as a necessary adjunct to parliamentary government, the occasional and violent process of impeachment was superseded by continuous, inescapable, and pacific legislative supervision. The impeachment of cabinet ministers may be regarded, indeed, as obsolete.

**75. How a Ministry may Be Overthrown.**—A fundamental maxim of the constitution to-day is that a cabinet shall continue in office only so long as it enjoys the confidence and support of a majority in the House of Commons. There are at least four ways in which a parliamentary majority may manifest its dissatisfaction with a cabinet,

and so compel its resignation. It may pass a simple vote of "want of confidence," assigning therefor no definite reason. It may pass a vote of censure, criticising the cabinet for some specific act. It may defeat a measure which the cabinet advocates and declares to be of vital importance. Or it may pass a bill in opposition to the advice of the ministers. The cabinet is not obliged to give heed to an adverse vote in the Lords; but when any of the four votes indicated is carried in the lower chamber the premier and his colleagues must do one of two things—resign or appeal to the country. If it is clear that the cabinet has lost the support, not only of Parliament, but also of the electorate, the only honorable course for the ministry is that of resignation. If, on the other hand, there is doubt as to whether the parliamentary majority really represents the country upon the matters at issue, the ministers are warranted in requesting the sovereign to dissolve Parliament and to order a general election. In such a situation the ministry continues tentatively in office. If at the elections there is returned a majority disposed to support the ministers, the cabinet is given a new lease of life. If, on the other hand, the new parliamentary majority is adverse, no course is open to the ministry save to retire. The new parliament will be convoked at the earliest practicable date; but in advance of its assembling the defeated cabinet will generally have resigned and a new government, presided over by the leader of the late Opposition, will have assumed the reins. During the interval required for the transfer of power none save routine business is likely to be undertaken.

**76. Secrecy of Proceedings.**—Perpetually responsible to the House of Commons and imperatively obligated to resign collectively when no longer able to command a working majority in that body, the cabinet must at all times employ every device by which it may be enabled to present a solid and imposing front. Two such devices are those of secrecy and the leadership of the premier. It is a sufficiently familiar principle that a group of men brought together to agree upon and execute a common policy in behalf of a widespread and diverse constituency will be more likely to succeed if the differences that must inevitably appear within their ranks are not published to the world. It is in deference to this principle that the German Bundesrath transacts its business to this day behind closed doors, and it was for an analogous reason that the public was excluded from the sittings of the convention by which the present constitution of the United States was framed. Notices of meetings of the English cabinet and the names of members present appear regularly in the press, but respecting the subjects discussed, the opinions expressed, and the conclusions

arrived at not a word is given out, officially or unofficially. The oath of secrecy, required of all privy councillors, is binding in a special degree upon the cabinet officer. Not even the sovereign is favored with more than a statement of the topics considered, together with occasionally a formal draft of such decisions as require his assent. In the earlier part of the nineteenth century meager minutes of the proceedings were preserved, but nowadays no clerical employee is allowed to be present and no record whatsoever is kept.[1] For knowledge of past transactions members rely upon their own or their colleagues' memories, supplemented at times by privately kept notes. The meetings, which are held only as occasion requires (usually as often as once a week when Parliament is in session) are notably informal. There is not even a fixed place where meetings are held, the members being gathered sometimes at the Foreign Office, sometimes at the premier's house, and, as circumstance may arise, at almost any convenient place.

**77. Leadership of the Premier.**—The unity of the cabinet is further safeguarded and emphasized by the leadership of the prime minister. Long after the rise of the cabinet to controlling influence in the state the members of the ministerial body continued supposedly upon a common footing in respect both to rank and authority. The habitual abstention of the early Hanoverians from attendance at cabinet meetings, however, left the group essentially leaderless, and by a natural process of development the members came gradually to recognize a virtual presidency on the part of one of their own number. In time what was a mere presidency was converted into a thoroughgoing leadership, in short, into the premier's office of to-day. It is commonly regarded that the first person who fulfilled the functions of prime minister in the modern sense was Sir Robert Walpole, First Lord of the Treasury from 1715 to 1717 and from 1721 to 1742. The phrase "prime minister" was not at that time in use, but that the realities of the office existed is indicated by a motion made in the Commons attacking Walpole on the ground that he had "grasped in his own hands every branch of government; had attained the sole direction of affairs; had monopolized all the powers of the crown; had compassed the disposal of all places, pensions, titles, and rewards"—almost precisely, as one writer puts it, what the present premier is doing and is

[1] The same thing is true of the President's cabinet in the United States. The reasons for the policy are obvious and ample; but the preservation of cabinet records, whether in Great Britain or the United States, would, if such records were to be made accessible, facilitate enormously the task of the historian and of the student of practical government.

expected to do.[1] By the time of the establishment of the ministry of the younger Pitt, in 1783, the ascendancy of the premier among his colleagues was an accomplished fact and was recognized as altogether legitimate. The enormous power of the premier, arising immediately upon the ruins of the royal prerogative, was brought virtually to completion when, during the later years of George III., the rule became fixed that in constituting a ministry the king should but ratify the choice of officials made by the premier.

Not until 1906 was the premier's office recognized by law,[2] but through more than a century no other public position in the nation has been comparable with it in volume of actual ruling power. Within the ministry, more particularly the cabinet, the premier is the guiding force. He presides, as a rule, at cabinet meetings; he advises with colleagues upon all matters of consequence to the administration's welfare; and, although he will shrink from doing it, he may require of his colleagues that they acquiesce in his views, with the alternative of his resignation.[3] He occupies one of the high offices of state, usually that of First Lord of the Treasury; and, although ordinarily his own portfolio will not require much of his time or energy, he must maintain as close a watch as may be over the affairs of every one of the departments in which his appointees have been placed. The prime minister, is, furthermore, the link between the cabinet and, on the one hand, the crown, and, on the other, Parliament. On behalf of the cabinet he advises with the sovereign, communicating information respecting ministerial acts and synopses of the daily debates in Parlia-

[1] Moran, The English Government, 99.

[2] In a statute fixing the order of precedence of public dignitaries. The premier's position, however, was defined by a royal warrant of December, 1905.

[3] The resignation of the premier terminates *ipso facto* the life of the ministry. An excellent illustration of the accustomed subordination of individual differences of opinion to the interests of cabinet solidarity is afforded by some remarks made by Mr. Asquith, December 4, 1911, to a deputation of the National League for Opposing Woman Suffrage. The deputation had called to protest against the Government's announced purpose to attach a suffrage amendment (if carried in the House of Commons) to a forthcoming measure of franchise reform. The Premier explained that he was, and always had been, of the opinion that "the grant of the parliamentary franchise to women in this country would be a political mistake of a very grievous kind." "So far," he continued, "we are in complete harmony with one another. On the other hand, I am, as you know, for the time being the head of the Government, in which a majority of my colleagues, a *considerable* majority of my colleagues—I may say that without violating the obligation of cabinet secrecy . . . —are of a different opinion; and the Government in those circumstances has announced a policy which is the result of their combined deliberations, and by which it is the duty of all their members, and myself not least, to abide loyally. That is the position, so far as I am personally concerned."

ment. In the house of which he is a member he represents the cabinet as a whole, makes such statements as are necessary relative to general aspects of the government's policy, and speaks, as a rule, upon every general or important projected piece of legislation. As a matter of both theory and historical fact, the premier who belongs to the House of Commons is more advantageously situated than one who sits in the Lords.[1]

**78. The Cabinet's Central Position.**—In the English governmental system the cabinet is in every sense the keystone of the arch. Its functions are both executive and legislative, and indeed, to employ the figure of Bagehot, it comprises the hyphen that joins, the buckle that fastens, the executive and the legislative departments together.[2] As has been pointed out, the uses of the crown are by no means wholly ornamental. None the less, the actual executive of the nation is the cabinet. It is within the cabinet circle that administrative policies are decided upon, and it is by the cabinet ministers and their subordinates in the several departments that these policies, and the laws of the land generally, are carried into effect. On the other side, the cabinet members not only occupy seats in one or the other of the houses of Parliament; collectively they direct the processes of legislation. They—primarily the prime minister—prepare the Speech from the Throne, in which at the opening of a parliamentary session the state of the country is reviewed and a programme of legislation is outlined. They formulate, introduce, explain, and advocate needful legislative measures upon all manner of subjects; and although bills may be submitted in either house by private members it is a recognized principle that all measures of large importance shall emanate directly or indirectly from the cabinet. Statistics demonstrate that measures introduced by private members have but an infinitesimal chance of enactment.

In effect, the cabinet comprises a parliamentary committee chosen, as Bagehot bluntly puts it, to rule the nation. If a cabinet group does not represent the ideas and purposes of Parliament as a whole, it at least represents those of the majority of the preponderating chamber; and that is ample to give it, during the space of its tenure of office, a thoroughgoing command of the situation. The basal fact of the political system is the control of party, and within the party the power that governs is the cabinet. "The machinery," says Lowell, "is one

[1] Low, The Governance of England, Chap. 9; M. Sibert, Étude sur le premier ministre en Angleterre depuis ses origines jusqu'à l'époque contemporaine (Paris, 1909).

[2] The English Constitution (new ed.), 79.

of wheels within wheels; the outside ring consisting of the party that has a majority in the House of Commons; the next ring being the ministry, which contains the men who are most active within that party; and the smallest of all being the cabinet, containing the real leaders or chiefs. By this means is secured that unity of party action which depends upon placing the directing power in the hands of a body small enough to agree, and influential enough to control." [1]

[1] Government of England, I., 56. The best discussion of the organization, functions, and relationships of the cabinet is contained in Lowell, *op. cit.*, I., Chaps. 2–3, 17–18, 22–23. Other good general accounts are Low, Governance of England, Chaps. 2–4, 8–9; Moran, English Government, Chaps. 4–9; Macy, English Constitution, Chap. 6; Anson, Law and Custom of the Constitution, II., Pt. 1, Chap. 2; and Maitland, Constitutional History of England, 387–430. A detailed and still valuable survey is in Todd, Parliamentary Government, Parts 3–4. A brilliant study is Bagehot, English Constitution, especially Chaps. 1, 6–9. The growth of the cabinet is well described in Blauvelt, The Development of Cabinet Government in England; and a monograph of value is P. le Vasseur, Le cabinet britannique sous la reine Victoria (Paris, 1902). For an extended bibliography see Select List of Books on the Cabinets of England and America (Washington, 1903), compiled in the Library of Congress under the direction of A. P. C. Griffin.

## CHAPTER IV

### PARLIAMENT: THE HOUSE OF COMMONS

**79. Antiquity and Importance.**—The British Parliament is at once the oldest, the most comprehensive in jurisdiction, and the most powerful among modern legislative assemblages. In structure, and to some extent in function, it is a product, as has appeared, of the Middle Ages. The term "parliament," employed originally to denote a discussion or conference, was applied officially to the Great Council in 1275;[1] and by the opening of the fourteenth century the institution which the English know to-day by that name had come clearly into existence, being then, indeed, what technically it still is—the king and the three estates of the realm, i. e., the lords spiritual, the lords temporal, and the commons. During upwards of a hundred years the three estates sat and deliberated separately. By the close of the reign of Edward III. (1327–1377), however, the bicameral principle had become fixed, and throughout the whole of its subsequent history (save during the Cromwellian era of experimentation) Parliament has comprised uninterruptedly, aside from the king, the two branches which exist at the present time, the House of Lords and the House of Commons, or, strictly, the Lords of Parliament and the Representatives of the Commons.

The range of jurisdiction which, step by step, these chambers, both separately and conjointly, have acquired has been broadened until, so far as the dominions of the British crown extend, it covers all but the whole of the domain of human government. And within this enormous expanse of political control the competence of the chambers knows, in neither theory nor fact, any restriction. "The British Parliament, . . ." writes Mr. Bryce, "can make and unmake any and every law, change the form of government or the succession to the crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory it is the nation, being the historical successor of the Folk Moot of our Teutonic fore-

[1] In the First Statute of Westminster.

fathers. Both practically and legally, it is to-day the only and the sufficient depository of the authority of the nation; and it is therefore, within the sphere of law, irresponsible and omnipotent."[1] Whether the business in hand be constituent or legislative, whether ecclesiastical or temporal, the right of Parliament—or, more accurately "the King in Parliament"—to discuss and to dispose is indisputable.

## I. The House of Commons prior to 1832

**80. Present Ascendancy.**—Legally, as has been explained, Parliament consists of the king, the lords spiritual, the lords temporal, and the commons. For practical purposes, however, it is the House of Commons alone. "When," as Spencer Walpole wrote a quarter of a century ago, "a minister consults Parliament he consults the House of Commons; when the Queen dissolves Parliament she dissolves the House of Commons. A new Parliament is simply a new House of Commons."[2] The gathering of the "representatives of the commons" at Westminster is, and has long been, without question the most important agency of government in the kingdom. The House of Commons consists at the present day of 670 members, of whom 465 sit for English constituencies, 30 for Welsh, 72 for Scottish, and 103 for Irish. Nine of the members are chosen, under somewhat special conditions, by the universities, but the remaining 661 are elected in county or borough constituencies under franchise arrangements, which, while based upon residence and property qualifications, fall not far short of manhood suffrage. The chamber is at the same time the preponderating repository of power in the national government and the prime organ of the popular will. It is in consequence of its prolonged and arduous development that Great Britain has attained democracy in national government; and the influence of English democracy as actualized in the House of Commons upon the political ideas and the governmental agencies of the outlying world, both English-speaking and non-English-speaking, is simply incalculable.

**81. Undemocratic Character at the Opening of the Nineteenth Century.**—"The virtue, the spirit, the essence of the House of Commons," once declared Edmund Burke, "consists in its being the express image of the nation." In the eighteenth century, however, when this assertion was made, the House of Commons was, in point of fact, far from constituting such an "image." Until, indeed, the nineteenth century was well advanced the nominally popular parliamentary branch was in

[1] The American Commonwealth (3d ed.), I., 35–36.
[2] The Electorate and the Legislature (London, 1892), 48.

reality representative, not of the mass of the nation, but of the aristocratic and governing elements, at best of the well-to-do middle classes; and a correct appreciation of the composition and character of the chamber as it to-day exists requires some allusion to the process by which its democratization was accomplished. In 1832—the year of the first great Reform Act—the House of Commons consisted of 658 members, of whom 186 represented the forty counties and 472 sat for two hundred three boroughs. The apportionment of both county and borough members was haphazard and grossly inequitable. In the Unites States, and in many European countries, it is required by constitutional provision that following a decennial census there shall be a reapportionment of seats in the popular legislative chamber, the purpose being, of course, to preserve substantial equality among the electoral constituencies and, ultimately, an essential parity of political power among the voters. At no time, however, has there been in Great Britain either legislation or the semblance of a tradition in respect to this matter. Reapportionment has taken place only partially and at irregular intervals, and at but a few times in the history of the nation have constituencies represented at Westminster been even approximately equal. Save that, in 1707, forty-five members were added to represent Scotland and, in 1801, one hundred to sit for Ireland, the identity of the constituencies represented in the Commons continued all but unchanged from the reign of Charles II. to the reform of 1832.

**82. Need of a Redistribution of Seats.**—The population changes, in respect to both growth and distribution, falling within this extended period were, however, enormous. In 1689 the population of England and Wales was not in excess of 5,500,000. The census of 1831 revealed in these countries a population of 14,000,000. In the seventeenth and earlier eighteenth centuries the great mass of the English people lived in the south and east. Liverpool was but an insignificant town, Manchester a village, and Birmingham a sand-hill. But the industrial revolution had the effect of bringing coal, iron, and water-power into enormous demand, and after 1775 the industrial center, and likewise the population center, of the country was shifted rapidly toward the north. In the hitherto almost uninhabited valleys of Lancashire and Yorkshire sprang up a multitude of factory towns and cities. In Parliament these fast-growing populations were either glaringly underrepresented or not represented at all. In 1831 the ten southernmost counties of England contained a population of 3,260,000 and returned to Parliament 235 members.[1] At the same time the six northernmost

[1] That is to say, the quota of members mentioned was returned by the counties and by the boroughs contained geographically within them.

counties contained a population of 3,594,000, but returned only 68 members. Cornwall, with 300,000 inhabitants, had 42 representatives; Lancashire, with 1,330,000, had 14. Among towns, Birmingham and Manchester, each with upwards of 100,000 people, and Leeds and Sheffield, each with 50,000, had no representation whatever. On the other hand, boroughs were entitled to representation which contained ridiculously scant populations, or even no population at all. Gatto, in Surrey, was a park; Old Sarum, in Wiltshire, was a deserted hill; the remains of what once was Dunwich were under the waves of the North Sea. Bosseney, in Cornwall, was a hamlet of three cottages, eight of whose nine electors belonged to a single family. But Bosseney sent two members to the House of Commons.

**83. County and Borough Franchise in 1831.**—Not only was there, thus, the most glaring lack of adjustment of parliamentary representation to the distribution of population; where the right of representation existed, the franchise arrangements under which members were elected were hopelessly heterogeneous and illiberal. Originally, as has been pointed out,[1] the representatives of the counties were chosen in the county court by all persons who were entitled to attend and to take part in the proceedings of that body. In 1429, during the reign of Henry VI., an act was passed ostensibly to prevent riotous and disorderly elections, wherein it was stipulated that county electors should thereafter comprise only such male residents of the county as possessed free land or tenement which would rent for as much as forty shillings a year above all charges.[2] Leaseholders, copyholders, small freeholders, and all non-landholders were denied the suffrage altogether. Even in the fifteenth and sixteenth centuries the number of forty-shilling freeholders was small. With the concentration of land in fewer hands, incident to the agrarian revolution of the eighteenth and early nineteenth centuries, it bore an increasingly diminutive ratio to the aggregate county population, and by 1832 the county electors comprised, as a rule, only a handful of large landed proprietors. Within the boroughs the franchise arrangements existing at the date mentioned were complicated and diverse beyond the possibility of general characterization. Many of the boroughs had been accorded parliamentary representation by the most arbitrary and haphazard methods, and at no time prior to 1830 was there legislation which so much as attempted to regulate the conditions of voting within them. There were "scot and lot" boroughs, "potwalloper" boroughs, burgage boroughs, corporation or "close" boroughs, and "freemen" boroughs, to mention only the more

[1] See p. 23.

[2] Equivalent in present values to £30 or £40.

important of the types that can be distinguished.[1] In some of these the franchise was, at least in theory, fairly democratic; but in most of them it was restricted by custom or local regulation to petty groups of property-holders or taxpayers, to members of the municipal corporations, or even to members of a favored guild. With few exceptions, the borough franchise was illogical, exclusive, and non-expansive.

**84. Political Corruption.**—A third fact respecting electoral conditions in the earlier nineteenth century is the astounding prevalence of illegitimate political influence and of sheer corruption. Borough members were very commonly not true representatives at all, but nominees of peers, of influential commoners, or of the government. It has been estimated that of the 472 borough members not more than 137 may be regarded as having been in any proper sense elected. The remainder sat for "rotten" boroughs, or for "pocket" boroughs whose populations were so meager or so docile that the borough might, as it were, be carried about in a magnate's pocket. In the whole of Cornwall there were only one thousand voters. Of the forty-two seats possessed by that section of the country twenty were controlled by seven peers, twenty-one were similarly controlled by eleven commoners, and but one was filled by free election. In 1780 it was asserted by the Duke of Richmond that a clear majority of the House of Commons was returned by six thousand persons. Bribery and other forms of corruption were so common that only the most shameless instances attracted public attention. Not merely votes, but seats, were bought and sold openly, and it was a matter of general understanding that £5,000 to £7,000 was the amount which a political aspirant might expect to be obliged to pay a borough-monger for bringing about his election. Seats were not infrequently advertised for sale in the public prints, and even for hire for a term of years.[2]

## II. Parliamentary Reform, 1832–1885

**85. Demand for Reform Prior to 1832.**—Active demand for a reformation of the conditions that have been described antedated the nineteenth century. As early as 1690, indeed, John Locke denounced the absurdities of the prevailing electoral system,[3] although at the time they were inconsiderable in comparison with what they became by

[1] See p. 23.

[2] The monumental treatise on the House of Commons prior to 1832 is E. Porritt. The Unreformed House of Commons: Parliamentary Representation before 1832, 2 vols. (2d ed., Cambridge, 1909). On the prevalence of corruption see May and Holland, Constitutional History of England, I., 224–238, 254–262.

[3] Treatises of Government, II., Chap. 13, § 157.

1832; and during the second half of the eighteenth century a number of interesting reform proposals—notably that of the elder Pitt in 1766, that of Wilkes in 1776, and that of the younger Pitt in 1785—were widely though fruitlessly discussed. In 1780 a group of public-spirited men established a Society for Constitutional Information which during the ensuing decade carried on actively a propaganda in behalf of parliamentary regeneration, and at a meeting under the auspices of this organization and presided over by Charles James Fox a programme was drawn up insisting upon innovations no less sweeping than the establishment of manhood suffrage, the creation of equal electoral districts, the payment of members, the abolition of property qualifications for members, and adoption of the secret ballot.[1] The revolution in France and the prolonged contest with Napoleon stayed the reform movement, but after 1815 agitation was actively renewed. The economic and social ills of the nation in the decade following the restoration of peace were many, and the idea took hold widely that only through a reconstitution of Parliament could adequate measures of amelioration be attained. The disposition of the Tory governments of the period was to resist the popular demand, or, at the most, to concede changes which would not affect the aristocratic character of the parliamentary chambers. But the reformers refused to be diverted from their fundamental object, and in the end the forces of tradition, conservatism, and vested interest were obliged to give way.[2]

**86. The Reform Act of 1832.**—The first notable triumph was the enactment of the Reform Bill of 1832. The changes wrought by this memorable piece of legislation were two-fold, the first relating to the distribution of seats in Parliament, the second to the extension of the franchise. The number of Scottish members was increased from 45 to 54; that of Irish, from 100 to 105; that of English and Welsh was reduced from 513 to 499. There was no general reapportionment of seats, no effort to bring the parliamentary constituencies into precise and uniform relation to the census returns. But the most glaringly

[1] It is of interest to observe that every one of the demands enumerated found a place half a century later among the "six points" of the Chartists. See pp. 82–83. A bill embodying the proposed reforms was introduced by the Duke of Richmond in 1780, but met with small favor. A second society—The Friends of the People—was formed in 1792 to promote the cause.

[2] The reform movement prior to 1832 is admirably sketched in May and Holland, Constitutional History of England, I., 264–280. See also G. L. Dickinson, The Development of Parliament during the Nineteenth Century (London, 1895), Chap. 1; J. H. Rose, The Rise and Growth of Democracy in Great Britain (London, 1897), Chap. 1; C. B. R. Kent, The English Radicals (London, 1899), Chaps. 1–2; and W. P. Hall, British Radicalism, 1791–1797 (New York, 1912).

inequitable of former conditions were remedied. Fifty-six boroughs, of populations under 2,000, were deprived entirely of representation,[1] thirty-one, of populations between 2,000 and 4,000, were reduced from two members to one, and one was reduced from four members to two. The 143 seats thus made available were redistributed, and the aggregate number (658) continued as before. Twenty-two large boroughs hitherto unrepresented were given two members each; twenty-one others were given one additional member each; and a total of sixty-five seats were allotted to twenty-seven of the English counties, the remaining thirteen being given to Scotland and Ireland. The redistribution had the effect of increasing markedly the political power of the northern and north-central portions of the country. The alterations introduced in the franchise were numerous and important. In the counties the forty-shilling freehold franchise, with some limitations, was retained; but the voting privilege was extended to all leaseholders and copyholders of land renting for as much as £10 a year, and to tenants-at-will holding an estate worth £50 a year. In the boroughs the right to vote was conferred upon all "occupiers" of houses worth £10 a year. The total number of persons enfranchised was approximately 455,000. By basing the franchise exclusively upon the ownership or occupancy of property of considerable value the reform fell short of admitting to political power the great mass of factory employees and of agricultural laborers, and for this reason it was roundly opposed by the more advanced liberal elements. If, however, the voting privilege had not been extended to the masses it had been brought appreciably nearer them; and—what was almost equally important—it had been made substantially uniform, for the first time, throughout the realm.[2]

**87. The Chartist Movement.**—The act of 1832 possessed none of the elements of finality. Its authors were in general content, but with the lapse of time it was made increasingly manifest that the nation was not. Political power was still confined to the magnates of the kingdom, the townsfolk who were able to pay a £10 annual rental, and the well-to-do copyholders and leaseholders of rural districts. Whigs and Tories of influence alike insisted that further innovation could not be contemplated, but the radicals and the laboring masses insisted no less resolutely that the reformation which had been begun should be carried to its logical conclusion. The demands upon which emphasis was especially placed were gathered up in the "six points" of the People's Charter, promulgated in final form May 8, 1838. The six points were:

[1] Of the fifty-six all save one had returned two members.

[2] The more important parts of the text of the Reform Bill of 1832 are printed in Robertson, Statutes, Cases and Documents, 197–212.

(1) universal suffrage for males over twenty-one years of age, (2) equal electoral districts, (3) voting by secret ballot, (4) annual sessions of Parliament, (5) the abolition of property qualifications for members of the House of Commons, and (6) payment of members. The barest enumeration of these demands is sufficient to reveal the political backwardness of the England of three-quarters of a century ago. Not only was the suffrage still severely restricted and the basis of representation antiquated and unfair; voting was oral and public, and only men who were qualified by the possession of property were eligible for election.[1]

**88. The Representation of the People Act of 1867.**—After a decade of spectacular propaganda Chartism collapsed, without having attained tangible results. None the less, the day was not long postponed when the forces of reform, sobered and led by practical statesmen, were enabled to realize one after another of their fundamental purposes. In 1858 the second Derby government acquiesced in the enactment of a measure by which all property qualifications hitherto required of English, Welsh, and Irish members were abolished,[2] and after 1860 projects for franchise extension were considered with increasing seriousness. In 1867 the third Derby government, whose guiding spirit was Disraeli, carried a bill providing for an electoral reform of a more thoroughgoing character than any persons save the most uncompromising of the radicals had ever asked or desired. This Representation of the People Act modified but slightly the distribution of parliamentary seats. The total number of seats remained unchanged, as did Ireland's quota of 105; Scotland's apportionment was increased from 54 to 60, while that of England and Wales was decreased from 499 to 493; and in the course of the reallotment that was made eleven boroughs lost the right of representation and thirty-five others were reduced from two members to one. The fifty-two seats thus vacated were utilized to enfranchise twelve new borough and three university constituencies and to increase the representation of a number of the more populous towns and counties.

The most important provisions of the Act were, however, those relating to the franchise. In England and Wales the county franchise was guaranteed to men whose freehold was of the value of forty shillings a year, to copyholders and leaseholders of the annual value of £5, and to

[1] Rose, Rise and Growth of Democracy, Chaps. 6–8; Kent, The English Radicals, Chap. 3; and R. G. Gammage, History of the Chartist Movement, 1837–1854 (Newcastle-on-Tyne, 1894).

[2] By law of 1710 it had been required that county members should possess landed property worth £600, and borough members worth £300, a year. These qualifications were very commonly evaded, but they were not abolished until 1858.

householders whose rent amounted to not less than £12 a year. The twelve pound occupation franchise was new,[1] and the qualification for copyholders and leaseholders was reduced from £10 to £5; otherwise the county franchise was unchanged. The borough franchise was modified profoundly. Heretofore persons were qualified to vote as householders only in the event that their house was worth as much as £10 a year. Now the right was conferred upon every man who occupied, as owner or as tenant, for twelve months, a dwelling-house, or any portion thereof utilized as a separate dwelling, without regard to its value. Another newly established franchise admitted to the voting privilege all lodgers occupying for as much as a year rooms of the clear value, unfurnished, of £10 a year. The effect of these provisions was to enfranchise the urban working population, even as the act of 1832 had enfranchised principally the urban middle class. So broad, indeed, did the urban franchise at this point become that little room was left for its modification subsequently. As originally planned, Disraeli's measure would have enlarged the electorate by not more than 100,000; as amended and carried, it practically doubled the voting population, raising it from 1,370,793 immediately prior to 1867 to 2,526,423 in 1871.[2] By the act of 1832 the middle classes had been enfranchised; by that of 1867 political power was thrown in no small degree into the hands of the masses. Only two large groups of people remained now outside the pale of political influence, i. e., the agricultural laborers and the miners.

**89. The Representation of the People Act of 1884.**—That the qualifications for voting in one class of constituencies should be conspicuously more liberal than in another class was an anomaly, and in a period when anomalies were at last being eliminated from the English electoral system remedy could not be long delayed. February 5, 1884, the second Gladstone ministry redeemed a campaign pledge by introducing a bill extending to the counties the same electoral regulations that had been established in 1867 in the towns. The measure passed the Commons, but was rejected by the Lords by reason of the fact that it was not accompanied by a bill for the redistribution of seats. By an agreement between the two houses a threatened deadlock was averted, and the upshot was that before the end of the year the Lords accepted the Government's bill, on the understanding that its enactment was to be followed immediately by the introduction of a redistribution measure.

[1] It may be regarded, however, as taking the place of the £50 rental franchise.

[2] It is to be observed that these figures are for the United Kingdom as a whole, embracing the results not merely of the act of 1867 applying to England and Wales but of the two acts of 1868 introducing similar, though not identical, changes in Scotland and Ireland.

The Representation of the People Act of 1884 is in form disjointed and difficult to understand, but the effect of it is easy to state. By it there was established a uniform household franchise and a uniform lodger franchise in all counties and boroughs of the United Kingdom. The occupation of any land or tenement of a clear annual value of £10 was made a qualification in boroughs and counties alike; and persons occupying a house by virtue of office or employment were to be deemed "occupiers" for the purpose of the act. The measure doubled the county electorate and increased the total electorate by some 2,000,000, or approximately forty per cent. Its most important effect was to enfranchise the workingman in the country, as the act of 1867 had enfranchised the workingman in the town.

**90. The Redistribution of Seats Act, 1885.**—In 1885, the two great parties co-operating, there was passed the Redistribution of Seats Act which had been promised. Now for the first time in English history attempt was made to apportion representation in the House of Commons in something like strict accordance with population densities. In the first place, the total number of members was increased from 658[1] to 670, and of the number 103 were allotted to Ireland, 72 to Scotland, and 495 to England and Wales. In the next place, the method by which former redistributions had been accomplished, i. e., transferring seats more or less arbitrarily from flagrantly over-represented boroughs to more populous boroughs and counties, was replaced by a method based upon the principle of equal electoral constituencies, each returning one member. In theory a constituency was made to comprise 50,000 people. Boroughs containing fewer than 15,000 inhabitants were disfranchised as boroughs, becoming for electorial purposes portions of the counties in which they were situated. Boroughs of between 15,000 and 50,000 inhabitants were allowed to retain, or if previously unrepresented were given, one member each. Those of between 50,000 and 165,000 were given two members, and those of more than 165,000 three, with one in addition for every additional 50,000 people. The same general principle was followed in the counties. Thus the city of Liverpool, which prior to 1885 sent three members to Parliament, fell into nine distinct constituencies, each returning one member, and the great northern county of Lancashire, which since 1867 had been divided into four portions each returning two members, was now split into twenty-three divisions with one member each. The boroughs which prior to 1885 elected two members, and at the redistribution retained that number, remained single constituencies for the election of those two members. Of these

[1] Strictly 652, since after 1867 four boroughs, returning six members, were disfranchised.

boroughs there are to-day twenty-three. They, together with the city of London and the three universities of Oxford, Cambridge, and Dublin, comprise the existing twenty-seven two-member constituencies. By partition of the counties, of the old boroughs having more than two members, and of the new boroughs with only two members, all save these twenty-seven constituencies have been erected into separate, single-member electoral divisions, each with its own name and identity.[1]

### III. The Franchise and the Electoral Questions of To-day

**91. The Franchise as It Is.**—By the measures of 1884 and 1885 the House of Commons was placed upon a broadly democratic basis. Both measures stand to-day upon the statute-books, and neither has been amended in any important particular. With respect to the existing franchises there are two preponderating facts. One of them is that individuals, as such, do not possess the privilege of voting; on the contrary, the possession of the privilege is determined all but invariably in relation to the ownership or occupation of property. The other is that the franchise system, while substantially uniform throughout the kingdom, is none the less the most complicated in Europe. There are three important franchises which are universal and two which are not. In the first group are included: (1) occupancy, as owner or tenant, of land or tenement of a clear yearly value of £10; (2) occupancy, as owner or tenant, of a dwelling-house, or part of a house used as a

[1] On the reforms of the period 1832–1885 see Cambridge Modern History, X., Chap. 18, and XI., Chap. 12; Dickinson, Development of Parliament, Chap. 2; Rose, Rise and Growth of Democracy, Chaps. 2, 10–13; Marriott, English Political Institutions, Chap. 10. An excellent survey is May and Holland, Constitutional History of England, I., Chap. 6, and III., Chap. 1. Mention may be made of H. Cox, A History of the Reform Bills of 1866 and 1867 (London, 1868); J. S. Mill, Considerations on Representative Government (London, 1861); and T. Hare, The Election of Representatives, Parliamentary and Municipal (3d ed., London, 1865). An excellent survey by a Swiss scholar is contained in C. Borgeaud, The Rise of Modern Democracy in Old and New England, trans. by B. Hill (London, 1894), and a useful volume is J. Murdock, A History of Constitutional Reform in Great Britain and Ireland (Glasgow, 1885). The various phases of the subject are covered, of course, in the general histories of the period, notably S. Walpole, History of England from the Conclusion of the Great War in 1815, 6 vols. (new ed., London, 1902); W. N. Molesworth, History of England from the year 1830–1874, 3 vols. (London, 1874); J. F. Bright, History of England, 5 vols. (London, 1875–1894); H. Paul, History of Modern England, 5 vols. (London, 1904–1906); and S. Low and L. C. Sanders, History of England during the Reign of Victoria (London, 1907). Three biographical works are of special service: S. Walpole, Life of Lord John Russell, 2 vols. (London, 1889); J. Morley, Life of William E. Gladstone, 3 vols. (London, 1903); and W. F. Monypenny, Life of Benjamin Disraeli, Earl of Beaconsfield, vols. 1–2 (London and New York, 1910–1912).

separate dwelling, without regard to its value; and (3) occupancy of lodgings of the value, unfurnished, of £10 a year. The two franchises which are not universal are (1) ownership of land of forty shillings yearly value or occupation of land under certain other specified conditions—this being applicable only to counties and, to a small extent, to boroughs which are counties in themselves; and (2) residence of freemen in those towns in which they had a right to vote prior to 1832. The conditions and exceptions by which these various franchises are attended are so numerous that few people in England save lawyers make a pretense of knowing them all, and the volume of litigation which arises from the attempted distinction between "householder" and "lodger," and from other technicalities of the subject, is enormous. Voters must be twenty-one years of age, and there are several complicated requirements in respect to the period of occupation of land and of residence, and likewise in respect to the fulfillment of the formalities of registration.[1] There are also various incidental disqualifications. No peer, other than a peer of Ireland who is in possession of a seat in the House of Commons, may vote; persons employed as election agents, canvassers, clerks, or messengers may not vote, nor may the returning officers of the constituencies, save when necessary to break a tie between two candidates; and aliens, felons, and, under stipulated conditions, persons in receipt of public charity, are similarly debarred. In the aggregate, however, the existing franchises approach measurably near manhood suffrage. It has been computed that the ratio of electors to population is approximately one in six, whereas, the normal proportion of males above the age of twenty-one, making no allowance for paupers, criminals, and other persons commonly disqualified by law, is somewhat less than one in four. The only classes of adult males at present excluded regularly from the voting privilege are domestic servants, bachelors living with their parents and occupying no premises on their own account, and persons whose change of abode periodically deprives them of a vote.

"The present condition of the franchise," asserts Lowell, "is, indeed, historical rather than rational. It is complicated, uncertain, expensive in the machinery required, and excludes a certain number of people whom there is no reason for excluding, while it admits many people who ought not to be admitted if any one is to be debarred." [2] During the

[1] On the process of registration see Anson, Law and Custom of the Constitution, I., 134–137, and M. Caudel, L'enregistrement des électeurs en Angleterre, in *Annales des Sciences Politiques*, Sept., 1906.

[2] Government of England, I., 213. On the franchise system see Anson, Law and Custom of the Constitution, I., Chap. 4 and Lowell, *op. cit.*, I., Chap. 9.

past generation there has been demand from a variety of quarters that the conditions of the franchise, and, indeed, the electoral system as a whole, be overhauled, co-ordinated, and liberalized; and at the date of writing (1912) there is pending in Parliament a measure of fundamental importance looking in this direction. The electoral changes which have been most widely advocated, at least in recent years, are four in number: (1) a fresh apportionment of seats in the Commons in accordance with the distribution of population; (2) the extension of the franchise to classes of men at present debarred; (3) the abolition of the plural vote; and (4) the enfranchisement of women.

**92. The Question of Redistribution of Seats.**—As has been pointed out, the Redistribution of Seats Act of 1885 established constituencies in which there was some approach to equality. The principle was far from completely carried out. For example, the newly created borough of Chelsea contained upwards of 90,000 people, while the old borough of Windsor had fewer than 20,000. But the inequalities left untouched by the act were slight in comparison with those which have arisen during a quarter of a century in which there has been no reapportionment whatsoever. In 1901 the least populous constituency of the United Kingdom, the borough of Newry in Ireland, contained but 13,137 people, while the southern division of the county of Essex contained 217,030; yet each was represented by a single member. This means, of course, a gross disparity in the weight of popular votes, and, in effect, the over-representation of certain sets of opinions and interests. In January, 1902, an amendment to a parliamentary address urging the desirability of redistribution was warmly debated in the Commons, and, on the eve of its fall, in the summer of 1905, the Balfour government submitted a Redistribution Resolution designed to meet the demands of the "one vote, one value" propagandists. At this time it was pointed out that whereas immediately after the reform of 1885 the greatest ratio of disparity among the constituencies was 5.8 to 1, in twenty years it had risen to 16.5 to 1. The plan proposed provided for the fixing of the average population to be represented by a member at from 50,000 to 65,000, the giving of eighteen additional seats to England and Wales and of four to Scotland, the reduction of Ireland's quota by twenty-two, and such further readjustments as would bring down the ratio of greatest disparity to 6.8 to 1. Under a ruling of the Speaker to the effect that the resolution required to be divided into eight or nine parts, to be debated separately, the proposal was withdrawn. It was announced that a bill upon the subject would be brought in, but the early retirement of the ministry rendered this

impossible, and throughout succeeding years this aspect of electoral reform yielded precedence to other matters.[1]

A special difficulty inherent in the subject is imposed by the peculiar situation of Ireland. By reason of the decline of Ireland's population during the past half century that portion of the United Kingdom has come to be markedly over-represented at Westminster. The average Irish commoner sits for but 44,147 people, while the average English member represents 66,971. If a new distribution were to be made in strict proportion to members Ireland would lose 30 seats and Wales three, while Scotland would gain one and England about 30. It is contended by the Irish people, however, that the Act of Union of 1800, whereby Ireland was guaranteed as many as one hundred parliamentary seats, is in the nature of a treaty, whose stipulations cannot be violated save by the consent of both contracting parties; and so long as the Irish are not allowed a separate parliament they may be depended upon to resist, as they did resist in 1905, any proposal contemplating the reduction of their voting strength in the parliament of the United Kingdom.

**93. The Problem of the Plural Vote.**—Aside from the enfranchisement of women, the principal suffrage questions in Great Britain to-day are those pertaining to the conferring of the voting privilege upon adult males who are still debarred, the abolition of the plural vote, and a general simplification and unification of franchise arrangements. The problem of the plural vote is an old one. Under existing law an elector may not vote more than once in a single constituency, nor in more than one division of the same borough; but aside from this, and except in so far as is not prohibited by residence requirements, he is entitled to vote in every constituency in which he possesses a qualification. In the United States and in the majority of European countries a man is possessed of but one vote, and any arrangement other than this would seem to contravene the principle of civic equality which lies at the root of popular government. In England there have been repeated attempts to bring about the establishment of an unvarying rule of "one man, one vote," but never as yet with success. The number of plural voters—some 525,000—is relatively small, but when it is remembered that a single voter may cast during a parliamentary election as many as fifteen or twenty votes it will be observed that the number quite suffices to turn the scale in many closely contested constituencies. An overwhelming proportion of the plural voters are identified with the Conservative party, whence it arises that the Liberals are, and long have been, hostile to the privilege. Following the Liberal triumph

[1] *Annual Register* (1905), 193.

at the elections of 1906 a Plural Voting Bill was introduced requiring that every elector possessed of more than one vote should be registered in the constituency of his choice and in no other one. The measure passed the Commons, by a vote of 333 to 104, but the Conservative majority in the Lords compassed its defeat, alleging that while it was willing to consider a complete scheme of electoral reform the proposed bill was not of such character.[1]

**94. The Franchise Bill of 1912.**—Soon after the final enactment, in August, 1911, of the Parliament Bill whereby the complete ascendancy of the Commons was secured in both finance and legislation [2] the Liberal government of Mr. Asquith made known its intention to bring forward at an early date a comprehensive measure of franchise reform. During the winter of 1911–1912 the project was formulated, and in the early summer of 1912 the bill was introduced. The adoption of the measure in its essentials is not improbable, although at the date of writing [3] it is by no means assured. In the main, the bill makes provision for three reforms. In the first place, it substitutes for the present complicated and illogical network of suffrages a simple residential or occupational qualification, thereby extending the voting privilege to practically all adult males. In the second place, it simplifies the process of registration and, in effect, enfranchises large numbers of men who in the past have been unable to vote because of change of residence or of the difficulties of the registration process. Finally, it abolishes absolutely both the plural vote and the separate representation of the universities. The effect of the first two of these provisions, it is estimated, would be to enlarge the electorate by 2,500,000 votes, that of the third, to reduce it by upwards of 600,000; [4] so that the net result of the three would be to raise an existing electorate of eight millions to one of ten millions. A total of twenty-eight franchise statutes are totally, and forty-four others are partially, repealed by the bill. The ground upon which the measure, in its earlier stages, was attacked principally was its lack of provision for a redistribution of seats. The defense of the Government has been that, while the imperative need of redistribution is recognized, such redistribution can be effected only after it shall be

[1] May and Holland, Constitutional History of England, III., 48–49. It may be noted that an able royal commission, appointed in December, 1908, to study foreign electoral systems and to recommend modifications of the English system, reported in 1910 adversely to the early adoption of any form of proportional representation.

[2] See pp. 110–113.

[3] October, 1912.

[4] The number of plural voters is placed at 525,000; that of graduates who elect the university representatives, at 49,614.

known precisely what the franchise arrangements of the kingdom are to be.[1]

**95. The Question of Woman's Suffrage.**—It will be observed that the Franchise Bill restricts the franchise to adult males. The measure was shaped deliberately, however, to permit the incorporation of an amendment providing for the enfranchisement of women. It is a fact not familiarly known that English women of requisite qualifications were at one time in possession of the suffrage at national elections. They were not themselves allowed to vote, but a woman was privileged to pass on her qualifications temporarily to any man, and, prior to the seventeenth century, the privilege was occasionally exercised. It was not indeed, until the Reform Act of 1832 that the law of elections, by introducing the phrase "male persons," in effect vested the parliamentary franchise exclusively in men.[2] The first notable attempt made in Parliament to restore and extend the female franchise was that of John Stuart Mill in 1867. His proposed amendment to the reform bill of that year was defeated by a vote of 196 to 73. In 1870 a woman's suffrage measure drafted by Dr. Pankhurst and introduced in the Commons by John Bright passed its second reading by a majority of thirty-three, but was subsequently rejected. During the seventies and early eighties a vigorous propaganda was maintained and almost every session produced its crop of woman's suffrage bills. A determined attempt was made to secure the inclusion of a woman's suffrage clause in the Reform Bill of 1884. The proposed amendment was supported very generally by the press, but in consequence of a threat by Gladstone to the effect that if the amendment were carried the entire measure would be withdrawn the project was abandoned. The next chapter of importance in the history of the movement was inaugurated by the organization, in 1903, of the Women's Social and Political Union. In 1904 a suffrage bill was introduced but failed to become law. Within the past decade, however, the cause has made substantial headway, and by the spectacular character which it has assumed it has attracted wide attention. In March, 1912, a Woman's Enfranchisement measure was rejected in the House of Commons by the narrow margin of 222 to 208 votes. Premier Asquith is opposed to female enfranchisement, but his colleagues in the ministry are almost evenly divided upon the issue, and it is not inconceivable that a woman's suffrage measure may be carried through in the guise of an amendment to the pending Franchise Bill. If it were to be, and the qualifications

[1] A timely volume is J. King and F. W. Raffety, Our Electoral System; the Demand for Reform (London, 1912).

[2] May and Holland, Constitutional History of England, III., 61.

should be made identical with those of men, the number of women voters would be approximately 10,500,000.[1]

**96. Qualifications for Election.**—The regulations governing the qualifications essential for election to Parliament are to-day, on the whole, simple and liberal. The qualification of residence was replaced in the eighteenth century by a property qualification; but, as has been pointed out, in 1858 this likewise was swept away. Oaths of allegiance and oaths imposing religious tests once operated to debar many, but all that is now required of a member is a very simple oath or affirmation of allegiance, in a form compatible with any shade of religious belief or unbelief. Any male British subject who is of age is qualified for election, unless he belongs to one of a few small groups—notably peers (except Irish); clergy of the Roman Catholic Church, the Church of England, and the Church of Scotland; certain office-holders; bankrupts; and persons convicted of treason, felony, or corrupt practices. A member is not required to be a resident of the electoral district which he represents. Once elected, a man properly qualified cannot escape membership by resignation. He may be expelled, but the only means by which he can retire from the House voluntarily is the acceptance of some public post whose occupant is *ipso facto* disqualified. To serve this end two or three sinecures are maintained, the best known being the stewardship of the Chiltern Hundreds. The member who desires to give up his seat accomplishes his purpose by applying for one of these offices, receiving it, and after having disqualified himself, resigning it.

## IV. Electoral Procedure and Regulations

**97. Writs and Election Days.**—When a parliament is dissolved the royal proclamation wherein the dissolution is declared expresses the desire of the crown to have the advice of the people and announces the sovereign's will and pleasure to call a new parliament. With this proclamation as a warrant, the chancellors of Great Britain and Ireland forthwith issue writs of election, addressed to the returning officers of the counties and boroughs, i. e., in all Scotch and Irish constituencies and in the English counties the sheriffs, or their deputies, and in the English boroughs the mayors. The form of these writs, as well as the nature of the electoral procedure generally, is prescribed in the Parliamentary and Municipal Elections Act, commonly known as the Ballot Act, of

[1] K. Schirmacher, The Modern Woman's Rights Movement, trans. by C. C. Eckhardt (New York, 1912), 58–96; B. Mason, The Story of the Woman's Suffrage Movement (London, 1911); E. S. Pankhurst, The Suffragette; the History of the Woman's Militant Suffrage Movement, 1905–1910 (London, 1911). The subject is surveyed briefly in May and Holland, Constitutional History, III., 59–66.

1872.[1] Upon receipt of the proper writ the returning officer gives notice of the day and place of the election, and of the poll if it is known that the election will be contested. In the counties the election must take place within nine days, in the boroughs within four days, after receipt of the writ, but within these limits the date is fixed in each constituency by the returning officer. What actually happens on election day is: (1) all candidates for seats are placed formally in nomination; (2) if within an hour of the time fixed for the election the number of nominated candidates does not exceed the number of places to be filled, the election of these candidates is forthwith declared; and (3) if there is a contest the election is postponed to a polling day, to be fixed by the returning officer, in the counties from two to six, and in the boroughs not more than three, days distant.

**98. The Polling.**—Prior to 1872 candidates were nominated *viva voce* at the "hustings," an outdoor platform erected for the purpose; but nowadays nominations are made in writing. It is required that a candidate shall be proposed by a registered elector of the constituency and that his nomination shall be assented to formally by nine other electors. The number of uncontested elections is invariably large (especially in Ireland, where, in many instances, it is useless to oppose a candidate to the Nationalists), the proportion reaching sometimes one-fourth, and even one-third. Polling is completed within an individual constituency during the course of a single day, the hours being from eight o'clock in the morning until eight o'clock in the evening, but under the arrangements that have been described it falls out that a national election is extended invariably through a period of more than two weeks. The system operates, of course, to the advantage of the plural voter, who is enabled to present himself at the polls from day to day in widely separated constituencies. For the convenience of voters constituencies are divided regularly into districts, or precincts. When the properly qualified and registered elector appears at the polls a ballot paper is presented to him containing the names of the candidates. He takes this to a screened compartment and places a cross-mark opposite the name or names of those for whom he desires to vote, after which the paper is deposited in a box. At the conclusion of the polling, the boxes are transmitted to the returning officer of the constituency, the votes are counted, and the result is declared. The writ which served as the returning officer's authority is indorsed with a certificate of the election and returned to the clerk of the Crown in Chancery. It is to be observed, however, that in the universities the Ballot Act does not apply. In these constituencies an elector may deliver his

[1] For the form of the writ see Anson, Law and Custom of the Constitution, I., 57.

vote orally, or he may transmit it by proxy from his place of residence.[1]

**99. Frequency of Elections: the Campaign.**—General elections do not take place in Great Britain with periodic regularity. The only positive requirement in the matter is that an election must be ordered when a parliament has attained the maximum lifetime allowed it by law. Prior to 1694 there was no stipulation upon this subject and the king could keep a parliament in existence as long as he liked. Charles II. retained for seventeen years the parliament called at his accession. From 1694 to 1716, however, the maximum term of a parliament was three years; from 1716 to 1911 it was seven years; to-day it is five years.[2] In point of fact, parliaments never last through the maximum period, and an average interval of three or four years between elections has been the rule. In most instances an election is precipitated more or less unexpectedly on an appeal to the country by a defeated ministry, and it not infrequently happens that an election turns all but completely upon a single issue and thus assumes the character of a national referendum upon the subject in hand. This was pre-eminently true of the last general election, that of December, 1910, at which the country was asked to sustain the Asquith government in its purpose to curb the independent authority of the House of Lords. In any event, the campaign by which the election is preceded is brief, although it continues throughout the electoral period, and, if the outcome is doubtful, tends to increase rather than to diminish in intensity. Appeals to the voters are made principally through public speaking, the controversial and illustrated press, the circulation of pamphlets and handbills, parades and mass-meetings, and the generous use of placards, cartoons, and other devices designed to attract and focus attention. Plans are laid,

[1] On electoral procedure see Lowell, Government of England, I., Chap. 10; M. MacDonaugh, The Book of Parliament (London, 1897), 24–50; H. J. Bushby, Manual of the Practice of Elections for the United Kingdom (4th ed., London, 1874); W. Woodings, The Conduct and Management of Parliamentary Elections (4th ed., London, 1900); E. T. Powell, The Essentials of Self-Government, England and Wales (London, 1909); P. J. Blair, A Handbook of Parliamentary Elections (Edinburgh, 1909); and H. Fraser, The Law of Parliamentary Elections and Election Petitions (2d ed., London, 1910). A volume filled with interesting information is J. Grego, History of Parliamentary Elections and Electioneering from the Stuarts to Queen Victoria (new ed., London, 1892). The monumental work upon the entire subject is M. Powell (ed.), Rogers on Elections, 3 vols. (16th ed., London, 1897).

[2] The Representation of the People Act of 1867 made the duration of a parliament independent of a demise of the crown. The text of the Septennial Act and that of the Lords' Protest against the measure are printed in Robertson, Statutes, Cases, and Documents, 117–119.

arguments are formulated, and leadership in public appeal is assumed by the members of the Government, led by the premier, and, on the other side, by the men who are the recognized leaders of the parliamentary Opposition.[1]

**100. The Regulation of Electoral Expenditure**—Time was, and within the memory of men still living, when an English parliamentary election was attended by corrupt practices so universal and so shameless as to appear almost more ludicrous than culpable. Voters as a matter of course accepted the bribes that were tendered them and ate and drank and smoked and rollicked at the candidate's expense throughout the electoral period and were considered men of conscience indeed if they did not end by going over to the opposition. The notorious Northampton election of 1768, in the course of which a body of voters numbering under a thousand were the recipients of hospitalities from the backers of three candidates which aggregated upwards of a million pounds, was, of course, exceptional; but the history of countless other cases differed from it only in the amounts laid out. To-day an altogether different state of things obtains. From having been one of the most corrupt, Great Britain has become one of the most exemplary of nations in all that pertains to the proprieties of electoral procedure. The Ballot Act of 1872 contained provisions calculated to strengthen pre-existing corrupt practices acts, but the real turning point was the adoption of the comprehensive Corrupt and Illegal Practices Act of 1883. By this measure bribery (in seven enumerated forms) and treating were made punishable by imprisonment or fine and, under varying conditions, political disqualification. The number and functions of the persons who may be employed by the candidate to assist in a campaign were prescribed, every candidate being required to have a single authorized agent charged with the disbursement of all moneys (save certain specified "personal" expenditures) in the candidate's behalf and with the duty of submitting to the returning officer within thirty-five days after the election a sworn statement covering all receipts and expenditures. And, finally, the act fixed, upon a sliding scale in proportion to the size of the constituencies, the maximum amounts which candidates may legitimately expend. In boroughs containing not more than

[1] M. Ostrogorski, Democracy and the Organization of Political Parties, trans. by F. Clarke, 2 vols. (London, 1902), I., 442–501; MacDonaugh, The Book of Parliament, 1–23. Among numerous articles descriptive of English parliamentary elections mention may be made of H. W. Lucy, The Methods of a British General Election, in *Forum*, Oct., 1900; S. Brooks, English and American Elections, in *Fortnightly Review*, Feb., 1910; W. T. Stead, The General Election in Great Britain, in *American Review of Reviews*, Feb., 1910; and d'Haussonville, Dix jours en Angleterre pendant les élections, in *Revue des Deux Mondes*, Feb. 1, 1910.

2,000 registered voters the amount is £350, with an additional £30 for every thousand voters above the number mentioned. In rural constituencies, where proper outlays will normally be larger, the sum of £650 is allowed when the number of registered electors falls under 2,000, with £60 for each additional thousand. Beyond these sums the candidate is allowed an outlay of £100 for expenses of a purely personal character.

The range of expenditure which is thus permitted by law is, of course, considerable, and the records of election cases brought into the courts demonstrate that not infrequently in practice its limits are exceeded. None the less, the effect of the law has been undeniably to restrain the outpouring of money by candidates, to purify politics, and at the same time to enable men of moderate means to stand for election who otherwise would be at grave disadvantage as against their wealthier and more lavish competitors. It is of interest to observe that by reason of the non-participation of the state in electoral costs there fall upon candidates certain charges which are unknown in the United States and other countries. The bills submitted by the returning officer must be paid by the candidates within the constituency, and these bills cover the publishing of notices of the election, the preparing and supplying of nomination papers, the cost of dies, ballot-paper, polling-stations, and printing, the fees of clerks, and, finally, the travelling expenses and fee of the returning officer himself. The candidate's share of this outlay may be as small as £25, but it is likely to be from £200 to £300 and may rise to as much as £600.[1]

[1] On the adoption of the Corrupt and Illegal Practices Act of 1883 see May and Holland, Constitutional History of England, III., 31–33. The actual operation of the system established may be illustrated by citing a specific case. At the election of 1906 the maximum expenditure legally possible for Mr. Lloyd-George in his sparsely populated Carnarvon constituency was £470. His authorized agent, after the election, reported an outlay of £50 on agents, £27 on clerks and messengers, £189 on printing, postage, etc., £30 on public meetings, £25 on committee rooms, and £40 on miscellaneous matters—a total of £361. The candidate's personal expenditure amounted to £92, so that the total outlay of £462 fell short by a scant £8 of the sum that might legally have been laid out. Divided among the 3,221 votes that Mr. Lloyd-George received, his outlay per vote was 2s., 1od. At the same election Mr. Asquith's expenditure was £727; Mr. Winston Churchill's, £844; Mr. John Morley's, £479; Mr. Keir Hardie's, £623; Mr. James Bryce's, £480. In non-contested constituencies expenditures are small. In 1906 Mr. Redmond's was reported to be £25 and Mr. William O'Brien's, £20. In 1900 a total of 1,103 candidates for 670 seats expended £777,429 in getting 3,579,345 votes; in 1906, 1,273 candidates for the same 670 seats expended £1,166,858 in getting 5,645,104 votes; in January, 1910, 1,311 candidates laid out £1,296,382 in getting 6,667,394 votes. A well-informed article is E. Porritt, Political Corruption in England, in *North American Review*, Nov. 16, 1906.

# CHAPTER V

## PARLIAMENT: THE HOUSE OF LORDS

### I. Composition

**101. Origins.**—With the possible exception of the Hungarian Table of Magnates, the British House of Lords is the most ancient second chamber among parliamentary bodies. It is, furthermore, among second chambers the largest and the most purely hereditary. Its descent can be traced directly from the Great Council of the Plantagenet period and, in the opinion of some scholars, from the witenagemot of Anglo-Saxon times.[1] To the Council belonged originally the nobility, and the clergy, greater and lesser. Practically, the body was composed of the more influential churchmen and the more powerful tenants-in-chief of the crown. In the course of time the lesser clergy found it convenient to confine their attention to the proceedings of the ecclesiastical assemblage known as Convocation; while the lesser nobles, i. e., the poorer and more uninfluential ones, found it to their interest to cast in their lot, not as formerly with the great barons and earls, but with the well-to-do though non-noble knights of the shire. From the elements that remained—the higher clergy and the greater nobles—developed directly the House of Lords. The lesser barons, the knights of the shire, and the burgesses, on the other hand, combined to form the House of Commons.

**102. Princes of the Blood and Hereditary Peers.**—In respect to its fundamental constitution the House of Lords has undergone but slight modification during the many centuries of its existence. In respect, however, to the composition and size of the body changes have been numerous and important. There are in the chamber to-day at least six distinct groups of members, sitting by various rights and possess-

[1] "The House of Lords not only springs out of, it actually is, the ancient Witenagemot. I can see no break between the two." Freeman, Growth of the English Constitution, 62. Professor Freeman, it must be remembered, was prone to glorify Anglo-Saxon institutions and to under-estimate the changes that were introduced in England through the agency of the Norman Conquest. For the most recent statement of the opposing view see Adams, Origin of the English Constitution, Chaps. 1–4.

ing a status which is by no means identical. The first comprises princes of the royal blood who are of age. The number of these is variable, but of course never large. They take precedence of the other nobility, but in point of fact seldom participate in the proceedings of the Chamber. The second group is the most important of all. It comprises the peers with hereditary seats and is itself divided properly into three groups: the peers of England created before the union with Scotland in 1707, the peers of Great Britain created between the date mentioned and the union with Ireland in 1801, and the peers of the United Kingdom created since that date. Technically, peers are created by the crown; but in practice their creation is controlled largely by the premier; and the act may be performed for the purpose of honoring men of distinction in law, letters, science, or business, or for the more practical purpose of altering the political complexion of the upper chamber.[1] The power to create peerages is unlimited [2] and, this being the only means by which the membership of the body can be increased at discretion, the power is one which is not infrequently exercised. Originally the right to sit as a peer was conferred simply by an individual writ of summons, or by the fact that such a writ had been issued to one's ancestor, but this method has long since been replaced by a formal grant of letters patent, accompanied by bestowal of the requisite writ. With exceptions to be noted, peerages are hereditary, and the heir assumes his parliamentary seat at the age of twenty-one. Peers are of five ranks—dukes, marquises, earls, viscounts, and barons. The complicated rules governing the precedence of these classes are of large social, but of minor political, interest.

**103. Representative Peers of Scotland and of Ireland.**—A third group of members comprises the representative peers of Scotland. Under provision of the Act of Union of 1707, when a new parliament is summoned the whole body of Scottish peers elects sixteen of their

[1] The first peerage bestowed purely in recognition of literary distinction was that of Lord Tennyson in 1884, the peerages bestowed upon Macaulay and Bulwer Lytton having been determined upon in part under the influence of political considerations. The first professional artist to be honored with a peerage was Lord Leighton, in 1896. Lord Kelvin and Lord Lister are among well-known men of science who have been so honored. Lord Goschen's viscountcy was conferred, with universal approval, as the fitting reward of a great business career. The earldom of General Roberts and the viscountcies of Generals Wolseley and Kitchener were bestowed in recognition of military distinction. With some aptness the House of Lords has been denominated "the Westminster Abbey of living celebrities."

[2] Except that, under existing law, the crown cannot (1) create a peer of Scotland, (2) create a peer of Ireland otherwise than as allowed by the Act of Union with Ireland, and (3) direct the devolution of a dignity otherwise than in accordance with limitations applying in the case of grants of real estate.

number to sit as their representatives at Westminster. By custom the election takes place at Holyrood Palace in the city of Edinburgh.[1] The act of 1707 made no provision for the creation of Scottish peers, with the consequence that, through the extinction of noble families and the occasional conferring of a peerage of the United Kingdom upon a Scottish peer, the total number of Scottish peerages has been reduced from 165 to 33.[2] The tenure of a Scottish representative peer at Westminster expires with the termination of a parliament. A fourth group of members is the Irish. By the Act of Union of 1800 it was provided that not all of the peers of Ireland should be accorded seats in the House of Lords, but only twenty-eight of them, to be elected for life by the whole number of Irish peers. The number of Irish peerages was put in the course of gradual reduction and it is now under the prescribed maximum of one hundred.[3] Unlike the English and Scottish peers, Irish peers, if not elected to the House of Lords, may stand for election to the House of Commons, though they may not represent Irish constituencies.[4] While members of the Commons, however, they may not be elected to the Lords, nor may they participate in the choice of representative peers.

**104. The Lords of Appeal.**—A fifth group of members comprises the Lords of Appeal in Ordinary, who differ from other peers created by the crown in that their seats are not hereditary. One of the functions of the House of Lords is to serve as the highest national court of appeal. It is but logical that there should be included within the membership of the body a certain number of the most eminent jurists of the realm, and, further, that the judicial business of the chamber should be transacted largely by this corps of experts. In 1876 an Appellate Jurisdiction Act was passed authorizing the appointment of two (subsequently increased to four) "law lords" with the title of baron, and by legislation of 1887 the tenure of these members, hitherto conditioned upon the continued exercise of judicial functions, was made perpetual for life. At the present day these four justices, presided over by the Lord Chancellor, comprise in reality the supreme tribunal of the kingdom. Three of them are sufficient to constitute a quorum for the transaction of

[1] For a statement of the process of election see Anson, Law and Custom of the Constitution (4th ed.), I., 219–229.

[2] In 1909. Lowell, Government of England, I., 395.

[3] The crown was authorized to create one Irish peerage only for every three such peerages that should become extinct. During the thirty years preceding the conferring of an Irish peerage upon Mr. Curzon, in 1898, the creation of Irish peerages was entirely suspended.

[4] Lord Palmerston, for example, was an Irish peer, but sat in the House of Commons.

judicial business, and although other legal-minded members of the chamber may participate, and technically every member has a right to do so, in most instances this inner circle discharges the judicial function quite alone.[1]

**105. The Lords Spiritual.**—Finally, there are the ecclesiastical members—not peers, but "lords spiritual." In the fifteenth century the lords spiritual outnumbered the lords temporal; but upon the dissolution of the monasteries in the reign of Henry VIII., resulting in the dropping out of the abbots, the spiritual contingent fell permanently into the minority. At the present day the quota of ecclesiastical members is restricted, under statutory regulation, to 26. Scotland, whose established church is the Presbyterian, has none. Between 1801 and 1869 Ireland had four, but since the disestablishment of the Irish church in 1869 there have been none. In England five ecclesiastics, by statute, are entitled invariably to seats, i. e., the archbishops of Canterbury and York and the bishops of London, Durham, and Winchester. Among the remaining bishops the law allows seats to twenty-one, in the order of seniority. There are always, therefore, some English bishops—in 1909, ten—who are not members of the chamber.[2] All ecclesiastical members retain their seats during tenure of their several sees, but do not, of course, transmit their rights to their heirs, nor, necessarily, save in the case of the five mentioned, to their successors in office. Bishops and archbishops are elected, nominally, by the dean and chapter of the diocese; but when a vacancy arises the sovereign transmits a *congé d'élire* containing the name of the person to be elected, so that, practically, appointment is made by the crown, acting under the advice of the prime minister. Bishropics are created by act of Parliament.[3]

[1] The recognized advisability of strengthening the judicial element in the Lords precipitated at one time a serious issue respecting the power of the crown to create life peerages. In 1856, upon the advice of her ministers, Queen Victoria conferred upon a distinguished judge, Sir James Parke, a patent as Baron Wensleydale for life. The purpose was to introduce into the chamber desirable legal talent without further augmenting the peerage. For the creation of life peerages there was some precedent, but none later than the reign of Henry VI., and the House of Lords, maintaining that the right had lapsed and that the peerage had become entirely hereditary, refused to admit Baron Wensleydale until his patent was so modified that his peerage was made hereditary.

[2] The Bishop of Sodor and Man is entitled to a seat, but not to take part in the chamber's proceedings. His status has been compared to that of a territorial delegate in the United States. Moran, The English Government, 170.

[3] On the composition of the House of Lords see Lowell, Government of England, I., Chap. 21; Anson, Law and Custom of the Constitution, I., Chap. 5; May and Holland, Constitutional History of England, I., Chap. 5; Moran, English Government, Chap. 10; Low, Governance of England, Chap. 12; Courtney, Working

**106. Qualifications and Number of Members.**—A peer may be prevented from occupying a seat in the chamber by any one of several disqualifications. He must have attained the age of twenty-one; he must not be an alien; he must not be a bankrupt; he must not be under sentence for felony. On the other hand, a man who inherits a peerage cannot renounce the inheritance. Upon more than one occasion this rule has been a matter of political consequence, for its operation has sometimes meant that an able and ambitious commoner has been compelled to surrender his seat in the more important chamber and to assume a wholly undesired place in the upper house. In 1895 Mr. William W. Palmer, later Lord Selbourne, inheriting a peerage but desiring to continue for a time in the Commons, put this rule to a definite test by neglecting to apply for a writ of summons as a peer. The decision of the Commons, however, was that he was obligated to accept membership in the upper chamber, and hence to yield the place which he occupied in the lower.

The House of Lords numbers to-day 620 members. In earlier periods of its history it was a very much smaller body, and, indeed, its most notable growth has taken place within the past one hundred and fifty years. During the reign of Henry VII. there were never more than eighty members, the majority of whom were ecclesiastics. To the first parliament of Charles II. there were summoned 139 persons. At the death of William III. the roll of the upper chamber comprised 192 names. At the death of Queen Anne the number was 209; at that of George I. it was 216; at that of George II., 229; at that of George III., 339; at that of George IV., 396; at that of William IV., 456. Between 1830 and 1898 there were conferred 364 peerages—222 under Liberal ministries (covering, in the aggregate, forty years) and 142 under the Conservatives (covering twenty-seven years). More than one-half of the peerages of to-day have been created within the past fifty years, and of the remainder only an insignificant proportion can be termed ancient.

## II. The Reform of the Lords: the Question prior to 1909

**107. The Status of the Chamber.**—As a law-making body the House of Lords antedates the House of Commons. At the beginning of the fourteenth century the theory was that the magnates assented to legislation while the Commons merely petitioned for it. In a statute of 1322,

Constitution of the United Kingdom, Chap. 11; Macy, English Constitution, Chap. 4; Marriott, English Political Institutions, Chaps. 6–7; and Walpole, The Electorate and the Legislature, Chap. 2. The subject is treated in greater detail in Pike, Constitutional History of the House of Lords, especially Chap. 15.

however, the legislative character of Parliament as a whole was effectively recognized, and at the same time the legislative parity of the commons with the magnates. Thenceforth, until very nearly the present day, the two chambers were legally co-ordinate and every act of legislation required the assent of both. It is true that during the course of the nineteenth century there was a remarkable growth of legislative preponderance on the part of the House of Commons, until, indeed, the point was reached where all important measures were first presented in that chamber and the Lords were very certain not to thwart the ultimate adoption of any project of which the nation as represented in the popular branch unmistakably approved. Yet upon numerous occasions bills, and sometimes—as in the case of Gladstone's Home Rule Bill in 1893—highly important ones, were defeated outright; and at all times the chamber imposed a check upon the lower house and exercised a powerful influence upon the actual course of legislative business. Under the provisions of the act of 1911, however, the status and the legislative functions of the House of Lords have been profoundly altered, and an adequate understanding of the workings of the British parliament to-day requires some review of the changes wrought by that remarkable piece of legislation.

Throughout upwards of a century the "mending or ending" of the Lords has been among the most widely discussed of public issues in the United Kingdom. The question has been principally one of "mending," for the number of persons who have advocated seriously the total abolition of the chamber has been small and their influence has been slight. The utility of a second chamber, in a democratic no less than in an illiberal constitutional system, is very generally admitted,[1] and no one supposes that the House of Lords will ever be swept completely out of existence to make room for the establishment of a new and entirely different parliamentary body. If it were to devolve upon the people of Great Britain to-day to adopt for themselves *de novo* a complete governmental system, they might well not incorporate in that system an institution of the nature of the present House of Lords; but since the chamber exists and is rooted in centuries of national usage and tradition, the perpetuation of it, in some form, may be taken to be assured.

**108. The Breach Between the Lords and the Nation.**—The indictments which have been brought against the House of Lords have been sweeping and varied. They have been based upon the all but exclu-

[1] There are of, course, Englishmen who concur in the dictum of Sieyès that "if a second chamber dissents from the first, it is mischievous; if it agrees, it is superfluous." An able exponent of this doctrine, within recent years, is Sir Charles Dilke.

sively hereditary character of the membership, upon the meagerness of attendance at the sittings and the small interest displayed by a majority of the members, and upon the hurried and frequently perfunctory nature of the consideration which is accorded public measures. Fundamentally, however, the tremendous attack which has been levelled against the Lords has had as its impetus the conviction of large masses of people that the chamber as constituted stands persistently and deliberately for interests which are not those of the nation at large. Prior to the parliamentary reforms of the nineteenth century the House of Commons was hardly more representative of the people than was the upper chamber. Both were controlled by the landed aristocracy, and between the two there was as a rule substantial accord. After 1832, however, the territorial interests, while yet powerful, were not dominant in the Commons, and a cleavage between the Lords, on the one hand, and the Commons, increasingly representative of the mass of the nation, on the other, became a serious factor in the politics and government of the realm. The reform measures of 1867 and 1884, establishing in substance a system of manhood suffrage in parliamentary elections, converted the House of Commons into an organ of thoroughgoing democracy. The development of the cabinet system brought the working executive, likewise, within the power of the people to control. But the House of Lords underwent no corresponding transformation. It remained, and still is, an inherently and necessarily conservative body, representative, in the main, of the interests of landed property, adverse to changes which seem to menace property and established order, and identified with all the forces that tend to perpetuate the nobility and the Anglican Church as pillars of the state. By simply standing still while the remaining departments of the governmental system were undergoing democratization the second chamber became, in effect, a political anomaly.[1]

**109. Earlier Projects of Reform.**—Projects for the reform of the Lords were not unknown before 1832, but it has been since that date, and, more particularly during the past half-century, that the reform question has been agitated most vigorously. Some of the notable proposals that have been made relate to the composition of the chamber, others to the powers and functions of it, and still others to both of these things. In respect to the composition of the body, the suggestions that have been brought forward have contemplated most commonly the reduction of the chamber's size, the dropping out of the ecclesiastical members, and the substitution, wholly or in part, of specially designated members in the stead of the members who at present sit by hereditary right. As

[1] Dickinson, Development of Parliament during the Nineteenth Century, Chap. 3.

early as 1834 it was advocated that the archbishops and bishops of the Established Church should "be relieved from their legislative and judicial duties," and this demand, arising principally from the Nonconformists, has been voiced repeatedly in later years. In 1835 the opposition of the peers to measures passed by the Commons incited a storm of popular disapproval of such proportions that more than one of the members of the chamber gloomily predicted the early demolition of the body, and throughout succeeding decades the idea took increasing hold, within the membership as well as without, that change was inevitable. In 1869 a bill of Lord Russell providing for the gradual infiltration of life peers was defeated on the third reading, and in the same year a project of Earl Grey, and in 1874 proposals of Lord Rosebery and Lord Inchiquin, came to naught. The rejection by the Lords of measures supported by Gladstone's government in 1881–1883 brought the chamber afresh into popular disfavor, and in 1884 Lord Rosebery introduced a motion "that a select committee be appointed to consider the best means of promoting the efficiency of this House," with the thought that there might be brought into the chamber representatives of the nation at large, and even of the laboring classes. The motion was rejected overwhelmingly, but in 1888 it was renewed, and in that year the Salisbury government introduced two reform bills, one providing for the gradual creation of fifty life peerages, to be conferred upon men of attainment in law, diplomacy, and administrative service, and the other (popularly known as the "Black Sheep Bill") providing for the discontinuance of writs of summons to undesirable members of the peerage. The bills, however, were withdrawn after their second reading and an attempt on the part of Lord Carnarvon, in 1889, to revive the second of them failed.

**110. The Lords and the Liberal Government, 1906–1907.**—Thenceforward until 1907 the issue was largely quiescent. During a considerable portion of this period the Unionist party was in power, and between the upper chamber, four-fifths of whose members were Unionists, and the Unionist majority in the Commons substantial harmony was easily maintained. During the Liberal administration of 1893–1894 the Lords rejected Gladstone's second Home Rule Bill and mutilated and defeated other measures; but, although the Liberal leaders urged that the will of the people had been frustrated, the appeal for second chamber reform failed utterly to strike fire. With the establishment of the Campbell-Bannerman ministry, in December, 1905, the Liberals entered upon what has proved a prolonged tenure of power and the issue of the Lords was brought again inevitably into the forefront of public controversy. In consequence of the Lords' insistence upon an amendment of

the fundamentals of the Government's Education Bill, late in 1906, and the openly manifested disposition of the Unionist upper chamber to obstruct the Liberal programme in a variety of directions,[1] the warfare between the houses once more assumed threatening proportions. A resolution introduced by the premier June 24, 1907, was adopted in the Commons after a three days' debate by a vote of 385 to 100, as follows: "That, in order to give effect to the will of the people as expressed by elected representatives it is necessary that the power of the other House to alter or reject bills passed by this House shall be so restricted by law as to secure that within the limits of a single parliament the final decision of the Commons shall prevail." It was announced that a bill carrying into effect the substance of this declaration would be introduced, and it was understood that the Government's plan contemplated a reduction of the maximum life of a parliament from seven years to five and the institution of a system of conference committees whereby agreement might be effected upon occasion between the two houses, reserving the eventual right of the Commons, after a third rejection by the Lords, to enact a measure into law alone. Preoccupied, however, with projects of general legislation, the Government postponed and eventually abandoned the introduction of its bill.

In the upper chamber a measure introduced by Lord Newton, providing for (1) a reduction of the hereditary element by requiring that a peer by descent alone should have a right to sit only if he were elected (for a single parliament) as a representative peer or possessed other stipulated qualifications and (2) the appointment by the crown of a maximum of one hundred life peers, was discussed at some length. The bill was withdrawn, but it was decided to create a Select Committee on the House of Lords, under the chairmanship of Lord Rosebery, and in December, 1908, this committee reported a scheme of reform in accordance with which (1) a peerage alone should not entitle the holder to a seat in the chamber; (2) the hereditary peers, including those of Scotland and Ireland, should elect two hundred representatives to sit in the upper house for each parliament; (3) hereditary peers who had occupied certain posts of eminence in the government and the army

[1] Notably in respect to legislation abolishing the plural vote and regulating the liquor traffic. The Lords rejected a Plural Voting Bill and an Aliens Bill in 1906, a Land Values Bill in 1907, and a Licensing Bill in 1908. In the interest of accuracy it should be observed that during the first session of 1906 a total of 121 bills became law, that only four (including the Education Bill) passed by the Commons were rejected by the Lords, and that fifteen passed by the Lords were rejected in the Commons. The proportions at most sessions during the period under review were substantially similar. But, of course, measures rejected by the Lords were likely to be those in which the interest of the Liberal government was chiefly centered.

and navy should be entitled to sit without election; (4) the bishops should elect eight representatives, while the archbishops should sit as of right; and (5) the crown should be empowered to summon four life peers annually, so long as the total did not exceed forty. This series of proposals failed utterly to meet the Liberal demand and no action was taken upon it. But it is to be noted that the Lords' Reconstruction Bill of 1911, to be described presently, was based in no small measure upon information and recommendations forthcoming from the Rosebery committee.[1]

## III. The Question of the Lords, 1909–1911

**111. The Lords and Money Bills.**—In November, 1909, the issue was reopened in an unexpected manner by the Lords' rejection of the Government's Finance Bill, in which were included far-reaching proposals of the Chancellor of the Exchequer, Mr. Lloyd-George, respecting the readjustment of national taxation. This act of the upper chamber, while not contrary to positive law, contravened in so serious a manner long established custom that it was declared by those who opposed it to be in effect revolutionary. Certainly the result was to precipitate an alteration of first-rate importance in the constitution of the kingdom. The priority of the Commons within the domain of finance was established at an early period of parliamentary history; and priority, in time, was converted into thoroughgoing dominance. As early as 1407 Henry IV. recognized the principle that money grants should be initiated in the Commons, assented to by the Lords, and subsequently reported to the crown. This procedure was not always observed, but after the resumption by the two houses of their normal functions following the Restoration in 1660 the right of the commoners to take precedence in fiscal business was forcefully and continuously asserted. In 1671 the Commons resolved "that in all aids given to the king by the Commons, the rate or tax ought not to be altered by the Lords," and a resolution of 1678 reaffirmed that all bills granting supplies "ought to begin with the Commons." At no time did the Lords admit formally the validity of these principles; but, by refusing to consider fiscal measures originated in the upper chamber and to accept financial amendments there proposed, the Commons successfully enforced observance of them.

The rules in this connection upon which the Commons insisted have been summarized as follows: (1) The Lords ought not to initiate

[1] May and Holland, Constitutional History of England, III., 343–349. For references on the general subject of the reform of the Lords see pp. 115-116.

any legislative proposal embodied in a public bill and imposing a charge on the people, whether by taxes, rates, or otherwise, or regulating the administration or application of money raised by such a charge, and (2) the Lords ought not to amend any such legislative proposal by altering the amount of a charge, or its incidence, duration, mode of assessment, levy or collection, or the administration or application of money raised by such a charge." [1] These rules, although not embodied in any law or standing order, were through centuries so generally observed in the usage of the two houses that they became, for all practical purposes, a part of the constitutional system—conventional, it is true, but none the less binding. From their observance it resulted (1) that the upper chamber was never consulted about the annual estimates, about the amounts of money to be raised, or about the purposes to which those amounts should be appropriated; (2) that proposals of taxation came before it only in matured form and under circumstances which discouraged criticism; and (3) that, since the policy of the executive is controlled largely through the medium of the power of the purse, the upper house lost entirely the means of exercising such control. In 1860 the Lords, as has been mentioned, made bold to reject a bill for the repeal of the duties on paper; but the occasion was seized by the Commons to pass a resolution reaffirming vigorously the subordination of the second chamber in finance, and the next year the repeal of the paper duties was incorporated in the annual budget and forced through. Thereafter it became the invariable practice to give place to all proposals of taxation in the one grand Finance Bill of the year, with the effect, of course, of depriving the Lords of the opportunity to defeat a proposal of the kind save by rejecting the whole of the measure of which it formed a part.[2]

**112. The Finance Bill of 1909 and the Asquith Resolutions.**—The rejection of the Finance Bill in 1909,[3] following as it did the rejection of other important measures which the Liberal majority in the Commons had approved, raised in an acute form the question of the power

[1] Ilbert, Parliament, 205.

[2] It was in pursuance of this policy that Sir William Vernon-Harcourt incorporated in the Finance Bill of 1894, extensive changes in the death duties and Sir Michael Hicks-Beach, in 1899, included proposals for altering the permanent provisions made for the reduction of the national debt.

[3] Strictly, the Lords declined to assent to the Budget until it should have been submitted to the judgment of the people. On the nature of the Government's finance proposals see May and Holland, Constitutional History of England, III., 350–355; G. L. Fox, The British Budget of 1909, in *Yale Review*, Feb., 1910; and D. Lloyd-George, The People's Budget (London, 1909), containing extracts from the Chancellor's speeches on the subject.

of the Lords over money bills and precipitated a crisis in the relations between the two houses. On the one hand the House of Commons adopted, by a vote of 349 to 134, a memorable resolution to the effect that "the action of the House of Lords in refusing to pass into law the provision made by the House of Commons for the finances of the year is a breach of the constitution, and a usurpation of the privileges of the House of Commons"; and, on the other, the Asquith ministry came instantly to the decision that the situation demanded an appeal to the country. In January, 1910, a general election took place, with the result that the Government was continued in power, though with a reduced majority; and at the convening of the new parliament, in February, the Speech from the Throne promised that proposals should speedily be submitted "to define the relations between the houses of Parliament, so as to secure the undivided authority of the House of Commons over finance, and its predominance in legislation." The Finance Bill of the year was reintroduced and this time successfully carried through; but in advance of its reappearance the premier laid before the House of Commons a series of resolutions to the following effect: [1] (1) that the House of Lords should be disabled by law from rejecting or amending a money bill; (2) that the power of the chamber to veto other bills should be restricted by law; and (3) that the duration of a parliament should be limited to a maximum period of five years. During the course of the debate upon these resolutions it was made clear that the Government did not desire the abolition of the Lords, but wished merely to have the legislative competence of the house confined to consultation, revision, and, subject to proper safeguards, delay. April 14, 1910, the resolutions were adopted in the Commons by substantial majorities,[2] and with them as a basis the Government proceeded with the framing of its bill upon the subject.

Meanwhile, March 14, there had been introduced in the House of Lords by Lord Rosebery an independent series of resolutions, as follows: (1) that a strong and efficient second chamber is not merely a part of the British constitution but is necessary to the well-being of the state and the balance of Parliament; (2) that such a chamber may best be obtained by the reform and reconstitution of the House of Lords; and (3) that a necessary preliminary to such a reform and reconstitution is the acceptance of the principle that the possession of a peerage

[1] The Finance Bill passed its third reading in the House of Commons April 27, was passed in the Lords April 28, without division, and received the royal assent April 29.

[2] The votes on the three resolutions were, respectively, 339 to 237, 351 to 246, and 334 to 236.

should no longer of itself involve the right to sit and vote in the House. The first two of these resolutions were agreed to without division; the third, although vigorously opposed, was carried eventually by a vote of 175 to 17.

**113. The Unionists and the Referendum.**—The death of the king, May 6, halted consideration of the subject, and through the succeeding summer hope was centered in a "constitutional conference" participated in by eight representatives of the two houses and of the two principal parties. A total of twenty-one meetings were held, but all effort to reach an agreement proved futile and at the reassembling of Parliament, November 15, the problem was thrown back for solution upon the houses and the country. November 17 there was carried in the Lords, without division, a new resolution introduced by Lord Rosebery to the effect that in future the House of Lords should consist of Lords of Parliament in part chosen by the whole body of hereditary peers from among themselves and by nomination of the crown, in part sitting by virtue of offices held and qualifications possessed, and in part designated from outside the ranks of the peerage. A few days subsequently, the Government's Parliament Bill having been presented in the second chamber (November 21), Lord Lansdowne, leader of the Opposition in that chamber, came forward with a fresh series of resolutions designed to clarify the Unionist position in anticipation of the elections which were announced for the ensuing month. With respect to money bills it was declared that the Lords were "prepared to forego their constitutional right to reject or amend money bills which are purely financial in character," provided that adequate provision should be made against tacking, that questions as to whether a bill or any provision thereof were purely financial should be referred to a joint committee of the two houses (the Speaker of the Commons presiding and possessing a casting vote), and that a bill decided by such a committee to be not purely financial should be dealt with in a joint sitting of the two houses. With respect to all measures other than those thus provided for the resolutions declared that "if a difference arises between the two houses with regard to any bill other than a money bill in two successive sessions, and with an interval of not less than one year, and such difference cannot be adjusted by any other means, it shall be settled in a joint sitting composed of members of the two houses; provided that if the difference relates to a matter which is of great gravity, and has not been adequately submitted for the judgment of the people, it shall not be referred to the joint sitting, but shall be submitted for decision to the electors by referendum." It will be observed that these resolutions were hardly less drastic than were

those carried through the Commons by the ministry. Their adoption involved the abolition of the absolute veto of the second chamber and might well involve the intrusting of interests which the peers held dear to the hazards of a nation-wide referendum.[1] None the less, the resolutions were agreed to without division, and, both parties having in effect pronounced the existing legislative system unsatisfactory, the electorate was asked to choose between the two elaborate substitutes thus proposed.

**114. The Enactment of the Parliament Bill, 1911.**—The appeal to the country, in December, yielded results all but exactly identical with those of the elections of the previous January. The Government secured a majority of 127, and in the new parliament, which met February 6, the Parliament Bill was reintroduced without alteration. On the ground that the measure had been submitted specifically to the people and had been approved by them, the ministry demanded its early enactment by the two houses. May 15 the bill passed its third reading in the Commons by a vote of 362 to 241. During the committee stage upwards of one thousand amendments were suggested. But the Government stood firm for the instrument as originally drawn and, while it accepted a few incidental changes, in the end it got essentially its own way.

Meanwhile, early in May, Lord Lansdowne introduced in the upper chamber a comprehensive bill which put in form for legislation the programme of reconstruction to which the more moderate elements in that chamber were ready, under the circumstances, to subscribe. The Lansdowne Reconstruction Bill proposed, at the outset, a reduction of the membership of the chamber to 350. Princes of the blood and the two archbishops should retain membership, but the number of bishops entitled to sit should be reduced to five, these to be chosen triennially by the whole body of higher prelates upon the principle of proportional representation. The remainder of the membership should comprise lords of parliament, as follows: (1) 100 elected from the peers possessing carefully stipulated qualifications, for a term of twelve years, on the principle of proportional representation, by the whole body of hereditary peers (including the Scotch and Irish), one-fourth of the number retiring triennially; (2) 120 members chosen by electoral colleges composed of members of the House of Commons divided for the purpose into local groups, each returning from three to twelve, under conditions of tenure similar to those prevailing in the first class; and (3) 100 appointed, from the peerage or outside, by the

[1] For the growth of the idea of the referendum see H. W. Horwill, The Referendum in Great Britain, in *Political Science Quarterly*, Sept., 1911.

crown on nomination by the premier, with regard to the strength of parties in the House of Commons, and under the before-mentioned conditions of tenure. It was stipulated, further, that peers not sitting in the House of Lords should be eligible for election to the House of Commons, and that, except in event of the "indispensable" elevation of a cabinet minister or ex-minister to the peerage, it should be unlawful for the crown to confer the dignity of an hereditary peerage upon more than five persons during the course of any single year.

This body of proposals, it will be observed, related exclusively to the *composition* of the upper chamber. The Liberal leaders preferred to approach the problem from the other side and to assure the preponderance of the Commons by the imposition of positive restrictions upon the *powers* which the Lords, under given conditions, might exercise. Lord Lansdowne's bill—sadly characterized by its author as the "deathblow to the House of Lords, as many of us have known it for so long"—came too late, and the chamber, after allowing it to be read a second time without division, was constrained to drop it for the Government's measure. July 20 the Parliament Bill, amended in such a manner as to exclude from its operation legislation affecting the constitution and other matters of "great gravity," was adopted without division. The proposed amendments were highly objectionable to the Liberals and, relying upon an understanding entered into with the king during the previous November relative to the creation of peers favorable to the Government's programme, the ministry let it be understood that no compromise upon essentials could be considered.[1] Confronted with the prospect of a wholesale "swamping," [2] the Opposition fell back upon the policy of abstention and, although a considerable number of "last-ditchers" held out to the end, a group of Unionists adequate to carry the measure joined the supporters of the Government, August 10, in a vote not to insist upon the Lords' amendments, which meant, in effect, to approve the bill as adopted in the lower house.[3] The royal assent was extended August 18.

[1] When, July 24, Premier Asquith rose in the Commons to reply to the Lords' amendments there resulted such confusion that for the first time in generations, save upon one occasion in 1905, the Speaker was obliged to adjourn a sitting on account of the disorderly conduct of members.

[2] Had the Unionists maintained to the end their attitude of opposition the number of peers which would have had to be created to ensure the enactment of the bill would have been some 400.

[3] The final vote in the Lords was 131 to 114. The Unionist peers who voted with the Government numbered 37.

## IV. The Parliament Act of 1911 and After

**115. Provisions Relating to Money Bills.**—In its preamble the Parliament Act promises further legislation which will define both the composition and the powers of a second chamber "constituted on a popular instead of an hereditary basis"; but the act itself relates exclusively to the powers of the chamber as it is at present constituted. The general purport of the measure is to define the conditions under which, while the normal methods of legislation remain unchanged, financial bills and proposals of general legislation may nevertheless be enacted into law without the concurrence of the upper house. The first signal provision is that a public bill passed by the House of Commons and certified by the Speaker to be, within the terms of the act, a "money bill" shall, unless the Commons direct to the contrary, become an act of Parliament on the royal assent being signified, notwithstanding that the House of Lords may not have consented to the bill, within one month after it shall have been sent up to that house. A money bill is defined as "a public bill which, in the judgment of the Speaker, contains only provisions dealing with all or any of the following subjects: the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the payment thereof; or subordinate matters incidental to those subjects or any of them." A certificate of the Speaker given under this act is made conclusive for all purposes. It may not be questioned in any court of law.[1]

**116. Provisions Relating to Other Public Bills.**—The second fundamental stipulation is that any other public bill (except one to confirm a provisional order or one to extend the maximum duration of Parliament beyond five years) which is passed by the House of Commons in three successive sessions, whether or not of the same parliament, and which, having been sent up to the House of Lords at least

[1] An incidental effect of the act is to exalt the power and importance of the Speaker, although it should be observed that the Speaker has long been accustomed to state at the introduction of a public bill whether in his judgment the rights or privileges claimed by the House of Commons in respect to finance had been infringed. If he were of the opinion that there had been infringement, it remained for the House to determine whether it would insist upon or waive its privilege. Ilbert, Parliament, 207.

one month, in each case, before the end of the session, is rejected by that chamber in each of those sessions, shall, unless the House of Commons direct to the contrary, become an act of Parliament on the royal assent being signified thereto, notwithstanding the fact that the House of Lords has not consented to the bill. It is required that at least two years shall have elapsed between the date of the second reading of such a bill (i. e., the first real opportunity for its discussion) in the first of these sessions of the House of Commons and the final passage of the bill in the third of the sessions. To come within the provisions of this act the measure must be, at its initial and its final appearances, the "same bill;" that is, it must exhibit no alterations save such as are rendered necessary by the lapse of time. And a bill is to be construed to be "rejected" by the Lords if it is not passed, or if amendments are introduced to which the House of Commons does not agree, or which the House of Commons does not suggest to the House of Lords at the second or third passage of the bill.

**117. Effects of the Act.**—By the provisions which have been enumerated the co-ordinate and independent position which, in law if not in fact, the British upper chamber, as a legislative body, has occupied through the centuries has been effectually subverted. Within the domain of legislation, it is true, the Lords may yet exercise influence of no inconsiderable moment. To the chamber must be submitted every project of finance and of legislation which it is proposed to enact into law, and there is still nothing save a certain measure of custom to prevent the introduction of even the most important of non-financial measures first of all in that house. But a single presentation of any money bill fulfills the legal requirement and ensures that the measure will become law. For such a bill will not be presented until it has been passed by the Commons, and, emanating from the cabinet, it will not be introduced in that chamber until the assent of the executive is assured. The upper house is allowed one month in which to approve or to reject, but, so far as the enactment of the bill is concerned, the result is the same in any case. Upon ordinary legislation the House of Lords possesses still a veto—a veto, however, which is no longer absolute but only suspensive. The conditions which are required for the enactment of non-fiscal legislation without the concurrence of the Lords are not easy to bring about, but their realization is not at all an impossibility. By the repeated rejection of proposed measures the Lords may influence public sentiment or bring about otherwise a change of circumstances and thus compass the defeat of the original intent of the Commons, and this is the more possible since a minimum period of two years is required to elapse before a non-fiscal measure

can be carried over the Lords' veto. But the continuity of political alignments and of legislative policy is normally such in Great Britain that the remarkable legislative precedence which has been accorded the Commons must mean in effect little less than absolute law-making authority.

**118. Possible Further Changes and the Difficulties Involved.**— What the future holds in store for the House of Lords cannot be discerned. The Parliament Act, as has been pointed out, promises further legislation which will define both the composition and the powers of a second chamber constituted on a popular instead of an hereditary basis; but no steps have as yet (1912) been taken publicly in this direction, nor has any authoritative announcement of purpose been made.[1] Many Englishmen to-day are of the opinion that, as John Bright declared, "a hereditary House of Lords is not and cannot be perpetual in a free country." None the less, it is recognized that the chamber as it is at present constituted contains a large number of conscientious, eminent, and able men, that upon numerous occasions the body has imposed a wholesome check upon the popular branch, and that sometimes it has interpreted the will of the nation more correctly than has the popular branch itself. The most reasonable programme of reform would seem to be, not a total reconstitution of the chamber upon a non-hereditary basis, but (1) the adoption of the Rosebery principle that the possession of a peerage shall not of itself entitle the possessor to sit, (2) the admission to membership of a considerable number of persons representative of the whole body of peers, and (3) the introduction of a goodly quota of life peers, appointed by reason of legal attainments, governmental experience, and other qualities of fitness and eminence.[2]

It is to be observed, however, that neither this programme nor any other that can be offered, unless it be that of popular election, affords much ground upon which to hope for harmonious relations between the upper chamber and a Liberal Government. The House of Lords—*any* House of Lords in which members sit for life or in heredity—is inevita-

[1] The Parliament Act is the handiwork, of course, of the Liberal party, and only that party is likely to acknowledge the obligation to follow up the reform of the Lords which the measure imposes. But the Unionists may be regarded as committed by Lord Lansdowne's bill to some measure of popularization of the chamber.

[2] During the discussions of 1910 an interesting suggestion was offered (April 25) by Lord Wemyss to the effect that the representative character of the chamber should be given emphasis by the admission of three members designated by each of some twenty-one commercial, professional, and educational societies of the kingdom, such as the Royal Academy of Arts, the Society of Engineers, the Shipping Federation, and the Royal Institute of British Architects.

bly conservative in its political tendencies and sympathies, which means, as conditions are to-day, that the chamber is certain to be dominated by adherents of the Unionist party. History shows that even men who are appointed to the upper house as Liberals become adherents almost invariably, in time, of Unionism. The consequence is that, while a Unionist administration is certain to have the support of a working majority in both of the houses, a Liberal government cannot expect ever to find itself in the ascendancy in the Lords. Its measures will be easy to carry in the lower house but difficult or impossible to carry in the upper one. This was the central fact in the situation from which sprang the Parliament Act of 1911. By this piece of legislation the Liberals sought to provide for themselves a mode of escape from the *impasse* in which the opposition of the Lords so frequently has involved them. The extent, however, to which the arrangements effected will fulfill the purpose for which they were intended remains to be ascertained.[1] "An upper house in a true parliamentary system," says Lowell, "cannot be brought into constant accord with the dominant party of the day without destroying its independence altogether; and to make the House of Lords a mere tool in the hands of every cabinet would be well-nigh impossible and

[1] The literature of the question of second chamber reform in England is voluminous and but a few of the more important titles can be mentioned here. The subject is discussed briefly in Lowell, Government of England, I., Chap. 22; Moran, English Government, Chap. 11; Low, Governance of England, Chap. 13; and H. W. V. Temperley, Senates and Upper Chambers (London, 1910), Chap. 5. Important books include W. C. Macpherson, The Baronage and the Senate; or the House of Lords in the Past, the Present, and the Future (London, 1893); T. A. Spalding, The House of Lords: a Retrospect and a Forecast (London, 1894); J. W. Wylie, The House of Lords (London, 1908); W. S. McKechnie, The Reform of the House of Lords (Glasgow, 1909); W. L. Wilson, The Case for the House of Lords (London, 1910); and J. H. Morgan, The House of Lords and the Constitution (London, 1910). Of these, the first constitutes one of the most forceful defenses and the second one of the most incisive criticisms of the upper chamber that have been written. A brief review by an able French writer is A. Esmein, La Chambre des Lords et la démocratie (Paris, 1910). Among articles in periodicals may be mentioned H. W. Horwill, The Problem of The House of Lords, in *Political Science Quarterly*, March, 1908; E. Porritt, The Collapse of the Movement against the Lords, in *North American Review*, June, 1908; ibid., Recent and Pending Constitutional Changes in England, in *American Political Science Review*, May, 1910; J. L. Garvin, The British Elections and their Meaning, in *Fortnightly Review*, Feb., 1910; J. A R. Marriott, The Constitutional Crisis, in *Nineteenth Century*, Jan., 1910. A readable sketch is A. L. P. Dennis, Impressions of British Party Politics, 1909–1911, in *American Political Science Review*, Nov., 1911; and the best accounts of the Parliament Act and of its history are: Dennis, The Parliament Act of 1911, ibid., May and Aug., 1912; May and Holland, Constitutional History of England, III., 343–384; Lowell, Government of England (rev. ed., New York, 1912),

politically absurd." [1] Therein must be adjudged still to lie the essential dilemma of English politics.

Chap. 23a; *Annual Register* for the years 1910 and 1911; M. Sibert, Le vote du Parliament Act, in *Revue du Droit Public*, Jan.–March, 1912; and La réforme de la Chambre des Lords, ibid., July–Sept., 1912. A book of some value is C. T. King, The Asquith Parliament, 1906–1909; a Popular Sketch of its Men and its Measures (London, 1910).

[1] Government of England, I., 418–419.

# CHAPTER VI

## PARLIAMENT: ORGANIZATION, FUNCTIONS, PROCEDURE

### I. The Assembling of the Chambers

**119. Sessions.**—Parliament is required by statute to meet at least once in three years;[1] but, by reason of the enormous pressure of business and, in particular, the custom which forbids the voting of supplies for a period longer than one year, meetings are, in point of fact, annual. A session begins ordinarily near the first of February and continues, with brief adjournments at holiday seasons, until August or September. It is required that the two houses shall invariably be summoned together. Either may adjourn without the other, and the crown can compel an adjournment of neither. A prorogation, which brings a session to a close, and a dissolution, which brings the existence of a parliament to an end, must be ordered for the two houses conjointly. Both take place technically at the command of the crown, actually upon the decision of the ministry. A prorogation is to a specified date, and it terminates all pending business; but the reassembling of the houses may be either postponed or hastened by royal proclamation.

**120. The Opening of a Parliament.**—At the beginning of a session the members of the two houses gather first of all in their respective chambers. The commoners are summoned thereupon to the chamber of the Lords, where the letters patent authorizing the session are read and the Lord Chancellor makes known the desire of the crown that the Commons proceed with the choosing of a Speaker. The Commons withdraw to attend to this matter, and on the next day the newly elected official, accompanied by the members, presents himself at the bar of the House of Lords, announces his election, and, through the Lord Chancellor, receives the royal approbation. Having demanded and received guarantee of the "ancient and undoubted rights and privileges of the Commons," the Speaker and the members then retire to their own quarters, where the necessary oaths are administered. If, as is not unusual, the king meets Parliament in person, he goes in

[1] Triennial Act of December 22, 1694.

state, probably the next day, to the House of Lords and takes his seat upon the throne, and the Lord Chamberlain is instructed to desire the Gentleman Usher of the Black Rod to *command* the attendance once more of the Commons. If the sovereign does not attend, the Lords Commissioners bid the Usher to *desire* the Commons' presence. In any case, the commoners present themselves and the king (or, in his absence, the Lord Chancellor) reads the Speech from the Throne, in which is communicated succinctly the nature of the business to which attention is to be directed. Following the retirement of the sovereign, the Commons again withdraw, the Throne Speech is re-read and an address in reply voted in each house, and the Government begins the introduction of fiscal and legislative proposals. In the event that a session is not the first one of a parliament, the election of a Speaker and the administration of oaths are omitted.[1]

**121. The Palace of Westminster.**—From the beginning of parliamentary history the meeting-place of the houses has been regularly Westminster, on the left bank of the Thames. The last parliament which sat at any other spot was the third Oxford Parliament of Charles II., in 1681. The Palace of Westminster, in mediæval times outside, though near, the principal city of the kingdom, was long the most important of the royal residences, and it was natural that its great halls and chambers, together with the adjoining abbey, should be utilized habitually for parliamentary sittings. Of the enormous structure known as Westminster to-day (still, technically, a royal palace, though not a royal residence), practically all portions save old Westminster Hall were constructed after the fire of 1834. The Lords first occupied their present quarters in 1847 and the Commons theirs in 1850.[2]

**122. The Chambers of the Commons and the Lords.**—From opposite sides of a central lobby corridors lead to the halls in which the sittings

[1] On the ceremonies involved in the opening, adjournment, prorogation, and dissolution of a parliament see Anson, Law and Custom of the Constitution, I., 61–77; J. Redlich, The Procedure of the House of Commons; a Study of its History and Present Form, trans. by A. E. Steinthal, 3 vols. (London, 1908), II., 51–67; T. E. May, Treatise on the Law, Privileges, Proceedings, and Usage of Parliament (11th ed., London, 1906), Chap. 7; A. Wright and P. Smith, Parliament, Past and Present, 2 vols. (London, 1902), II., Chap. 25; MacDonaugh, The Book of Parliament, 96–114, 132–147, 184–203; and H. Graham, The Mother of Parliaments (Boston, 1911), 135–157.

[2] MacDonaugh, The Book of Parliament, 79–95; Graham, The Mother of Parliaments, 60–80; Wright and Smith, Parliament, Past and Present, I., Chaps. 11–13. The classic history of the old Palace of Westminster is E. W. Brayley and J. Britton, History of the Ancient Palace and Late Houses of Parliament at Westminster (London, 1836).

of the two bodies are held, these halls facing each other in such a manner that the King's throne at the south end of the House of Lords is visible from the Speaker's chair at the north end of the House of Commons. The room occupied by the Commons is not large, being but seventy-five feet in length by forty-five in breadth. It is bisected by a broad aisle, at the upper end of which is a large table for the use of the clerk and his assistants and beyond this the raised and canopied chair of the Speaker. "Facing the aisle on each side long rows of high-backed benches, covered with dark green leather, slope upward tier above tier to the walls of the room; and through them, at right angles to the aisle, a narrow passage known as the gangway, cuts across the House. There is also a gallery running all around the room, the part of it facing the Speaker being given up to visitors, while the front rows at the opposite end belong to the reporters, and behind them there stands, before a still higher gallery, a heavy screen, like those erected in Turkish mosques to conceal the presence of women, and used here for the same purpose." [1] The rows of benches on the gallery sides are reserved for members, but they do not afford a very desirable location and are rarely occupied, save upon occasions of special interest. In the body of the house there are fewer than 350 seats for 670 members. As a rule, not even all of these are occupied, for there are no desks and the member who wishes to read, write, or otherwise occupy himself seeks the library or other rooms adjoining. The front bench at the upper end of the aisle, at the right of the Speaker, is known as the Treasury Bench and is reserved for members of the Government. The corresponding bench at the Speaker's left is reserved similarly for the leaders of the Opposition. In so far as is possible in the lack of a definite assignment of seats, members of avowed party allegiance range themselves behind their leaders, while members of more independent attitude seek places below the gangway. "The accident that the House of Commons sits in a narrow room with benches facing each

[1] Lowell, Government of England, I., 249. Visitors, technically "strangers," are present only on sufferance and may be excluded at any time; but the ladies' gallery is not supposed to be within the chamber, so that an order of exclusion does not reach the occupants of it. In the autumn of 1908, however, the disorderly conduct of persons in the ladies' and strangers' galleries caused the Speaker to close these galleries during the remainder of the session. In 1738 the House declared the publication of its proceedings "a high indignity and a notorious breach of privilege," and, technically, such publication is still illegal. In 1771, however, the reporters' gallery was fitted up, and through a century and a quarter the proceedings have been reported and printed as a matter of course. On the status of the public and the press in the chamber see Ilbert, Parliament, Chap. 8; Redlich, Procedure of the House of Commons; II., 28–38; MacDonaugh, The Book of Parliament, 310–329, 350–365; and H. Graham, The Mother of Parliaments, 259–287.

other, and not, like most continental legislatures, in a semi-circular space, with seats arranged like those of a theatre, makes for the two-party system and against groups shading into each other." [1]

The hall occupied by the Lords is smaller and more elaborately decorated than that occupied by the Commons. It contains cross benches, but in the main the arrangements that have been described are duplicated in it. For social and ceremonial purposes there exists among the members a fixed order of precedence.[2] In the chamber, however, the seating is arranged without regard to this order, save that the bishops sit in a group. The Government peers occupy the benches on the right of the woolsack and the Opposition those on the left, while members who prefer to remain neutral take their places on the cross benches between the table and the bar.[3]

## II. Organization of the House of Commons

**123. Hours of Sittings.**—In the seventeenth century the sittings of the Commons began regularly at 8.30 or 9 o'clock in the morning and terminated with nightfall. In the eighteenth century, and far into the nineteenth, they were apt to begin as late as 3 or 4 o'clock in the afternoon and to be prolonged, at least not infrequently, until toward daybreak. In 1888, however, a standing order fixed midnight as the hour for the "interrupting" of ordinary business, and in 1906 the hour was made 11 o'clock. Nowadays the House meets regularly on Mondays, Tuesdays, Wednesdays, and Thursdays at 2.45 and continues in session throughout the evening, the interval formerly allowed for dinner having been abolished in 1906. On Fridays, set apart, until late in the session, for the consideration of private members' bills, the hour of convening is 12 o'clock. At sittings on days other than Friday the first hour or more is consumed usually with small items of formal business and with the asking and answering of questions addressed to the ministers, so that the public business set for the day is reached at approximately 4 o'clock.[4]

[1] Ilbert, Parliament, 124. The chamber is described fully in Wright and Smith, Parliament, Past and Present, Chap. 19.

[2] This order runs: Prince of Wales, other princes of the royal blood, Archbishop of Canterbury, Lord Chancellor, Archbishop of York, Lord President of the Council, Lord Privy Seal, the dukes, the marquises, the earls, the viscounts, the bishops, and the barons.

[3] For full description, with illustrations, see Wright and Smith, Parliament, Past and Present, Chap. 18.

[4] Redlich, Procedure of the House of Commons, II., 68–77.

**124. Officers.**—The principal officers of the House are the Speaker, the Clerk and his two assistants, the Sergeant-at-Arms and his deputies, the Chaplain, and the Chairman and Deputy Chairman of Ways and Means. The Clerk and the Sergeant-at-Arms, together with their assistants, are appointed for life by the crown, on nomination of the premier, but the Speaker and the Chairman and Deputy Chairman of Ways and Means are elected for a single parliament by the House.[1] All save the Chairman and his deputy are, strictly, non-political officers. The Clerk signs all orders of the House, indorses bills sent or returned to the Lords, reads whatever is required to be read during the sittings, records the proceedings of the chamber, and, with the concurrence of the Speaker, supervises the preparation of the official Journal. The Sergeant-at-Arms attends the Speaker, enforces the House's orders, and presents at the bar of the House persons ordered or qualified to be so presented. The Chairman of Ways and Means (in his absence the Deputy Chairman) presides over the deliberations of the House when the body sits as a committee of the whole [2] and exercises supervision over private bill legislation. Although a political official, he preserves, in both capacities, a strictly non-partisan attitude.

**125. The Speakership.**—The speakership arose from the need of the House when it was merely a petitioning body for a recognized spokesman, and although the known succession of Speakers begins with Sir Thomas Hungerford, who held the office in the last parliament of Edward III. (1377), there is every reason to suppose that at even an earlier date there were men whose functions were substantially equivalent. The Speaker is elected at the beginning of a parliament by and from the members of the House, and his tenure of office, unless terminated by resignation or death, continues through the term of that parliament. The choice of the House is subject to the approval of the crown; but, whereas in earlier days the king's will was at this point very influential, the last occasion upon which a Speaker-elect was rejected by the crown was in 1679. Though nominally elected, the Speaker is in fact chosen by the ministry, and he is pretty certain to be taken, in the first instance, from the party in power. During the nineteenth century, however, it became customary to re-elect a Speaker as long as he should be willing to serve, regardless of party affiliation.

**126. The Speaker's Functions and Powers.**—The functions of the Speaker are regulated in part by custom, in part by rules of the House,

[1] In point of fact, the Chairman and Deputy Chairman retire when the ministry by which they have been nominated goes out of office.

[2] On this account he is referred to ordinarily as the Chairman of Committees.

and in part by general legislation. They are numerous and, in the aggregate, highly important. The Speaker is, first of all, the presiding officer of the House. In this capacity he is a strictly non-partisan moderator whose business it is to maintain decorum in deliberations, decide points of order, put questions, and announce the result of divisions. The non-partisan aspect of the English speakership sets the office off in sharp contrast with its American counterpart. "It makes little difference to any English party in Parliament," says Mr. Bryce, "whether the occupant of the chair has come from their own or from hostile ranks. . . . A custom as strong as law forbids him to render help to his own side even by private advice. Whatever information as to parliamentary law he may feel free to give must be equally at the disposal of every member." [1] Except in the event of a tie, the Speaker does not vote, even when, the House being in committee, he is not occupying the chair. In the second place, the Speaker is the spokesman and representative of the House, whether in demanding privileges, communicating resolutions, or issuing warrants. There was a time when he was hardly less the spokesman of the king than the spokesman of the Commons, but the growth of independence of the popular chamber enabled him long ago to cast off this dual and extremely difficult rôle. The Speaker, furthermore, declares and interprets, though he in no case makes, the law of the House. "Where," says Ilbert, "precedents, rulings, and the orders of the House are insufficient or uncertain guides, he has to consider what course would be most consistent with the usages, traditions, and dignity of the House, and the rights and interests of its members, and on these points his advice is usually followed, and his decisions are very rarely questioned. . . . For many generations the deference habitually paid to the occupant of the chair has been the theme of admiring comment by foreign observers." [2] Finally, the fact should be noted that by the Parliament Act of 1911 the Speaker is given sole power, when question arises, to determine whether a given measure is or is not to be considered a money bill.[3] Upon his decision may hinge the entire policy of the Government respecting a measure, and even the fate of the measure itself. The Speaker's symbol of authority is the mace, which is carried before him when he formally enters or leaves the House and lies on the table before him when he is in the chair. He has an official residence in Westminster, and he receives a salary of £5,000 a year which is paid from the Consolidated Fund, being on that account not

[1] American Commonwealth, I., 135.
[2] Parliament, 140–141.
[3] See p. 112.

subject to change when the annual appropriation bills are under consideration. At retirement from office a Speaker is likely to be pensioned and to be elevated to the peerage.[1]

**127. Quorum.**—As fixed by a resolution of 1640, a quorum for the transaction of business in the Commons is forty. If at any time during a sitting the attention of the Speaker is directed to the fact that there are not forty members present, the two-minute sand-glass which stands upon the Clerk's table is inverted and the members are summoned from all portions of the building as for a division. At the close of the allotted two minutes the Speaker counts the members present, and if there be not forty the House adjourns until the time fixed for the next regular sitting. Except upon occasions of special interest, the number of members actually occupying the benches is likely to be less than two hundred, although most of the remaining members are within the building or, in any case, not far distant.

**128. Kinds of Committees.**—Like all important and numerous legislative bodies, the House of Commons expedites the transaction of the business which devolves upon it through the employment of committees. As early as the period of Elizabeth the reference of a bill, after its second reading, to a select committee was an established practice, and in the reign of Charles I. it became not uncommon to refer measures to committees of the whole house. The committees of the House to-day may be grouped in five categories: (1) the Committee of the Whole; (2) select committees on public bills; (3) sessional committees; (4) standing committees on public bills; and (5) committees on private bills. Until 1907 a public bill, after its second reading, went normally to the Committee of the Whole; since the date mentioned, it goes there only if the House so determines. The Committee of the Whole is simply the House of Commons, presided over by the Chairman of Committees in the place of the Speaker, and acting under rules of procedure which permit virtually unrestricted discussion and in other ways lend themselves to the free consideration of the details of a measure. When the subject in hand relates to the providing of revenue the body is known, technically, as the Committee of Ways and Means; when to appropriations, it is styled the Committee of the Whole on Supply, or simply the Committee of Supply.

[1] On the officers of the House of Commons see Lowell, Government of England, I., Chap. 12; on the speakership, Redlich, Procedure of the House of Commons, II., 131–171; Graham, The Mother of Parliaments, 119–134; MacDonaugh, The Book of Parliament, 115–132; Porritt, Unreformed House of Commons, I., Chaps. 21–22; A. I. Dasent, The Speakers of the House of Commons from the Earliest Times to the Present Day (New York, 1911); and G. Mer, Les speakers: étude de la fonction présidentielle en Angleterre et aux États-Unis (Paris, 1910).

**129. Select and Sessional Committees.**—Select committees consist, as a rule, of fifteen members and are constituted to investigate and report upon specific subjects or measures. It is through them that the House collects evidence, examines witnesses, and otherwise obtains the information required for intelligent legislation. After a select committee has fulfilled the immediate purpose for which it was constituted it passes out of existence. Each such committee chooses its chairman, and each keeps detailed records of its proceedings, which are included, along with its formal report, in the published parliamentary papers of the session. The members may be elected by the House, but in practice the appointment of some or all is left to the Committee of Selection, which itself consists of eleven members chosen by the House at the beginning of each session. This Committee of Selection, which appoints members not only of select committees but also of standing committees and of committees on private and local bills, is made up after conference between the leaders of the Government and of the Opposition; and the committees whose members it designates are always so constituted that they contain a majority favorable to the Government. The number of select committees is, of course, variable, but it is never small. A few are constituted for an entire year and are known as sessional committees. Of these, the Committee of Selection is itself an example; others are the Committee on Public Accounts and the Committee on Public Petitions.

**130. Standing Committees.**—Beginning in 1882, certain great standing committees have been created, to the general end that the time of the House may be further economized. Through a change of the standing orders of the chamber effected in 1907 the number of such committees was raised from two to four, and all bills except money bills, private bills, and bills for confirming provisional orders—that is to say, all public non-fiscal proposals—are required to be referred to one of these committees (the Speaker to determine which one) unless the House otherwise directs. It is expected that measures so referred will be so fully considered in committee that they will consume but little of the time of the House. Each of the four committees consists of from sixty to eighty members, who are named by the Committee of Selection in such a manner that in personnel they will represent faithfully the composition of the House as a whole. One of them, consisting of all the representatives of Scotch constituencies and fifteen other members, is constituted with a special view to the transaction of business relating to Scotland. The chairmen of the four are selected (from its own ranks) by a "chairman's panel" of not more than eight members designated by the Committee of Selection. The

procedure of the standing committees is closely assimilated to that of the Committee of the Whole, and, in truth, they serve essentially as substitutes for the larger body.[1]

## III. Organization of the House of Lords

**131. Sittings and Attendance.**—It is required that the two houses of Parliament shall be convened invariably together, and one may not be prorogued without the other. The actual sittings of the Lords are, however, very much briefer and more leisurely than are those of the Commons. Normally the upper chamber meets but four times a week—on Mondays, Thursdays, and Fridays at 4.30 o'clock and on Tuesdays at 5.30. By reason of lack of business or indisposition to consume time in the consideration of measures whose eventual enactment is assured, sittings not infrequently are concluded within an hour, although, of course, there are occasions upon which the chamber deliberates seriously and at much length. A quorum for the transaction of business is fixed at the number three; although it is but fair to observe that if a division occurs upon a bill and it is found that there are not thirty members present the question is declared not to be decided. Save upon formal occasions and at times when there is under consideration a measure in whose fate the members are immediately interested, attendance is always meager. There are members who after complying with the formalities incident to the assumption of a seat, rarely, and in some instances never, reappear among their colleagues. It thus comes about that despite the fact that nominally the House of Lords is one of the largest of the world's law-making assemblies, the chamber exhibits in reality little of the unwieldiness ordinarily characteristic of deliberative bodies of such magnitude. The efficiency of the chamber is more likely to be impaired by paucity of attendance than otherwise.

**132. Officers.**—The officers of the House of Lords are largely appointive, though in part elective. Except during the trial of a peer,[2] the presiding official is the Lord Chancellor, appointed by the crown on the advice of the premier. The duty of presiding in the Lords, as has been explained, is but one of many that fall to this remarkable

[1] On committees on private bills see p. 137. The committees of the House of Commons are described in Lowell, Government of England, I., Chap. 13; Marriott, English Political Institutions, Chap. 11; Ilbert, Parliament, Chap. 6; Redlich, Procedure of the House of Commons, II., 180–214; and May, Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, Chaps. 13–14.

[2] See p. 127.

dignitary.[1] If at the time of his appointment an incumbent is not a peer he is reasonably certain to be created one, although there is no legal requirement to this effect. The theory is that the woolsack which comprises the presiding official's seat is not within the chamber proper[2] and that the official himself, as such, is not a member of the body. The powers allowed him are not even those commonly possessed by a moderator. In the event that two or more peers request the privilege of addressing the chamber, the peers themselves decide which shall have the floor. Order in debate is enforced, not by the Chancellor, but by the members, and when they speak they address, not the chair, but "My Lords." Although, if a peer, the Chancellor may speak and vote as any other member, he possesses as presiding officer no power of the casting vote. In short, the position which the Chancellor occupies in the chamber is all but purely formal. In addition to "deputy speakers," designated to preside in the Chancellor's absence, the remaining officials of the Lords who owe their positions to governmental appointment are the Clerk of Parliament, who keeps the records; the Sergeant-at-Arms, who attends personally the presiding officer and acts as custodian of the mace; and the Gentleman Usher of the Black Rod, a pompous dignitary whose function it is to summon the Commons when their attendance is required and to play a more or less useful part upon other ceremonial occasions. The one important official whom the House itself elects is the Lord Chairman of Committees, whose duty it is to preside in Committee of the Whole.

## IV. Privileges of the Houses and of Members

**133. Nature and Extent of Privileges.**—On the basis in part of custom and in part of statute there exists a body of definitely established privileges, some of which appertain to the Commons as a chamber, some similarly to the Lords, and some to the individual members of both houses. The privileges which at the opening of a parliament the newly-elected Speaker requests and, as a matter of course, obtains for the chamber over which he presides include principally those of freedom from arrest, freedom of speech, access to the sovereign, and a "favorable construction" upon the proceedings of the House. Freedom from arrest is enjoyed by members during a session and a period of forty days before and after it, but it does not protect

[1] See p. 63.

[2] In the days of Elizabeth the presiding official sat upon a sack actually filled with wool. He sits now, as a matter of fact, upon an ottoman, upholstered in red. But the ancient designation of the seat survives.

a member from the consequences of any indictable offense nor, in civil actions, from any process save arrest. Freedom of speech, finally guaranteed effectually in the Bill of Rights, means simply that a member may not be held to account by legal process outside Parliament for anything he may have said in the course of the debates or proceedings of the chamber to which he belongs. The right of access to the sovereign belongs to the Commons collectively through the Speaker, but to the Lords individually. With the growth of parliamentary government both it and the privilege of "favorable construction" have ceased to possess practical importance. Another privilege which survives is that of exemption from jury duty, though no longer of refusing to attend court in the capacity of a witness. Each house enjoys the privilege—for all practical purposes now the right—of regulating its own proceedings, of committing persons for contempt, and of deciding contested elections. The last-mentioned function the House of Commons, however, has delegated to the courts. A privilege jealously retained by the Lords is that of trial in all cases of treason or felony by the upper chamber itself, under the presidency of a Lord High Steward appointed by the crown. The Lords are exempt from arrest in civil causes, not merely during and immediately preceding and succeeding sessions, but at all times, and they enjoy all the rights, privileges, and distinctions which, through law or custom, have become inherent in their several dignities.

**134. Payment of Members of the Commons.**—Until recently the fact that there was no salary attached to service in Parliament operated to debar from election to the Commons men who were not of independent means. Through some years the Labor Party was accustomed to provide funds wherewith its representatives were enabled to maintain themselves at the capital,[1] but this arrangement affected only a small group of members and was of an entirely private and casual nature. Public and systematic payment of members, to the end that poor but capable men might not be kept out of the Commons, was demanded by the Chartists three-quarters of a century ago, and from time to time after 1870 there was agitation in behalf of such a policy. In 1893, and again in 1895, a resolution in favor of the payment of members was adopted in the Commons, and March 7, 1906, a resolution was carried to the effect that every member should be paid a salary of £300 annually. But it was not until 1911 that a measure of the kind could be got through the upper chamber. Fresh impetus was afforded by the Osborne Judgment, in which, on an appeal from the lower courts, the House of Lords ruled in December, 1909,

[1] The sum provided from the party funds was ordinarily £200 a year.

that the payment of parliamentary members as such from the dues collected by labor organizations was contrary to law. The announcement of the Judgment was followed by persistent agitation for legislation to reverse the ruling. In connection with the budget presented to the Commons by the Chancellor of the Exchequer May 16, 1911, the proposition was made, not to take action one way or the other upon the Lords' decision, but to provide for the payment to all non-official members of the House of Commons of a yearly salary of £400; and with little delay and no great amount of opposition the proposal was enacted into law. The amount of the salary provided is not large, but it is ample to render candidacy for seats possible for numbers of men who formerly could not under any circumstances have contemplated a public career.[1]

## V. The Functions of Parliament

When the king summons the two chambers he does so, "being desirous and resolved as soon as may be to meet his people, and to have their advice in Parliament." No mention is made of legislative or financial business, and, technically, Parliament is still essentially what originally it was exclusively, i. e., a purely deliberative assemblage. Practically, however, the mere discussion of public questions and the giving of advice to the crown has become but one of several distinctive parliamentary functions. The newer functions which, with the passing of time, have acquired ever increasing importance are, in effect, three. The first is that of criticism, involving the habitual scrutiny and control of the measures of the executive and administrative organs. The second is the exercise, under limitations to be described, of the power of judicature. The third, and much the most important, is the function of public and private legislation and of fiscal control.

**135. Criticism: Ministerial Responsibility.**—Parliament does not govern and is not intended to govern. Never save when the Long Parliament undertook the administration of public affairs through committees of its members has Parliament asserted a disposition to gather immediately into its own hands those powers of state which are executive in character. At the same time, the growth of parliamentary government has meant the establishment of a connection between the

[1] On the privileges of the Commons see Anson, Law and Custom of the Constitution, I., 153–189; Lowell, Government of England, I., Chap. 11; Walpole, Electorate and Legislature, Chap. 5; Redlich, Procedure of the House of Commons, III., 42–50. A standard work in which the subject is dealt with at length is May, Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, Chaps. 3–6.

executive and the parliamentary chambers (principally the Commons) as close as may be so long as separateness of organization is still maintained. The officials who comprise the working executive are invariably members of Parliament. They initiate public measures, introduce them, advocate and defend them, and, in general, guide and control the conduct of public business both inside and outside the chambers. But for every act they are responsible directly to the House of Commons. They may continue in power only so long as they are supported by a majority in that chamber. And their conduct is subject continually to review and criticism, through the instrumentality of questions, formal inquiries, and, if need be, judicial procedure.

It is within the competence of any member to address a question to any minister of the crown who is also a member, to obtain information. Except in special cases, notice of questions must be given at least one day in advance, and a period of approximately three-quarters of an hour is set apart at four sittings every week for the asking and answering of such questions. A minister may answer or decline to answer, but unless a declination can be shown to arise from legitimate considerations of public interest its effect politically may be embarrassing. In any event, there is no debate, and in this respect the English practice differs from the French "interpellation." [1] The asking of questions is liable to abuse but, as is pointed out by Ilbert, "there is no more valuable safeguard against maladministration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the House, and how that answer will be received." [2] Any member is privileged to bring forward a motion censuring the Government or any member or department thereof, and a motion of this sort, when emanating from the leader of the Opposition, constitutes a vote of confidence upon whose result may depend the continued tenure of the ministry. By a call upon the Government or a given department for information, by the constitution of parliamentary committees, departmental committees, or royal commissions, and, in particular by taking advantage of the numberless opportunities afforded by the enactment of appropriation bills, the House of Commons may further impose upon the executive the most

[1] See p. 314.

[2] Parliament, 113–114.

thoroughgoing responsibility and control. "A strong executive government, tempered and controlled by constant, vigilant, and representative criticism," is the ideal at which the parliamentary institutions of Great Britain are aimed.[1]

**136. Judicial Powers: Impeachment and Attainder.**—The functions of a judicial character which, in the capacity of the High Court of Parliament, the two chambers fulfill are of secondary importance and do not call for extended discussion. So far as the law of the subject goes, they comprise (1) the powers possessed by each of the houses to deal with the constitution and conduct of its own membership; (2) the power of the Lords to try their own members when charged with treason or felony; (3) the jurisdiction of the Lords in the capacity of a final court of appeal for the United Kingdom; (4) the power of the two houses, acting jointly, to carry through impeachments of public officers and to enact bills of attainder; and (5) the effecting of the removal of certain kinds of public officers through the agency of an address from both houses to the crown. In days when the king and the ministers were disposed to defy the law and to evade responsibility the power of impeachment by the Commons at the bar of the Lords, originated as early as the reign of Edward III., was of the utmost importance. When, however, the House of Commons progressed in competence to the point where it was able to review and control the conduct of ministers with such thoroughness and continuity as to make it impossible for them to conduct business without a parliamentary majority, impeachment lost its value and fell into disuse. The last occasion upon which impeachment proceedings were instituted was in 1805.[2] Procedure by bill of attainder, arising from the legislative omnipotence of Parliament and following the ordinary course of legislation, is also obsolete.

**137. The House of Lords as a Court.**—Most important among surviving parliamentary functions of a judicial character is the exercise of appellate jurisdiction by the House of Lords. The judicial authority of the Lords is an anomaly, although as it is actually exercised it does not seriously contravene the principle which forbids the bringing together of judicial and legislative powers in the same hands. Historically, it arose from a confusion of the functions of two groups of men which were long largely identical in personnel, i. e., the Great

[1] Ilbert, Parliament, 119. On the Commons' control of the Government see Lowell, Government of England, I., Chap. 17; Moran, English Government, Chap. 8; Low, The Governance of England, Chap. 5; Todd, Parliamentary Government, II., 164–185.

[2] Anson, Law and Custom of the Constitution, I., 362–366; Moran, English Government, 327–332.

Council, on the one hand, and the Lords of Parliament, on the other. In the reign of Henry IV. the Commons asked specifically to be relieved from judicial business, and the parliamentary jurisdiction which survived was recognized thereafter to be vested in the House of Lords alone. From an early date this jurisdiction was, as it is to-day, both original and appellate. As a court of first instance the chamber acquired the right to try peers charged with treason and felony and, on the accusation of the House of Commons, to bring to justice, through the process of impeachment, offenders who were not of the peerage. Nowadays these powers are of no practical consequence.

The position of the Lords as an appellate tribunal, however, is still a fundamental fact in the judicial system. Starting with control, by way of appeal, over the courts of common law in England, the chamber acquired in time a similar control over the English courts of chancery, and eventually over the courts of both Scotland and Ireland. Its jurisdiction has stopped short only of the ecclesiastical courts, and of the courts of the outlying portions of the Empire, appeals from which are heard in the Judicial Committee of the Privy Council. By the Supreme Court of Judicature Act of 1873, whereby the higher tribunals of the realm were remodelled, the appellate jurisdiction of the Lords was abolished outright; but in 1876, before the measure had been put in operation the plan was modified and there was passed the Appellate Jurisdiction Act whereby the appellate functions of the Lords were restored and provision was made for the creation at first of two, later of three, and eventually of four, salaried life peers, to be selected from men of eminence in the law, and to be known as Lords of Appeal in Ordinary. In so far as it is controlled by statute at all, the appellate jurisdiction of the chamber is regulated to-day by this measure. Nominally, judicial business is transacted by the House as a whole, and every member has a right not only to be present but to participate in the rendering of decisions. Actually, such business is transacted by a little group of law lords (the attendance of but three being necessary) under the presidency of the Lord Chancellor, and the unwritten rule which prohibits the presence at judicial sessions of any persons save the law lords is quite as strictly observed as is any one of a score of other important conventions of the constitution.[1] Under the act of 1876 it is within the competence of the law lords to sit and to pronounce judgments in the name of the House at any time, regardless of whether Parliament is in session.[2] A sitting of the Court is, technically,

[1] Lowell, Government of England, II., 465.

[2] When Parliament is in session the sittings of the law lords are held, as a rule, prior to the beginning of the regular sitting at 4.30 P. M.

a sitting of the Lords, and all actions taken are entered in the Journal of the House as a part of its proceedings[1].

**138. Control of Legislation and Finance.**—The principal and altogether most indispensable ends which Parliament to-day subserves are those of legislation and of financial control. Many of the measures, important and unimportant, under which the affairs of the realm are regulated are but temporary and require annual re-enactment, and the volume of fresh legislation which is unceasingly demanded is all but limitless. Similarly, to employ the words of Anson, the revenues which accrue to the crown and can be dealt with independently of Parliament would hardly carry on the business of government for a day,[2] and not only does Parliament (in effect, the House of Commons) by its appropriation acts make possible the legal expenditure of virtually all public moneys; it provides, by its measures of taxation, the funds from which appropriations are made.

## VI. General Aspects of Parliamentary Procedure

By reason of the supreme importance which attaches to the legislative and fiscal activities of the two chambers it is necessary that attention be directed at this point to the character of the procedure which these activities involve. For the purpose in hand it will be sufficient to speak of only the more important principles of procedure in relation to the three fundamental phases of legislative work: (1) the enactment of non-financial public bills, (2) the adoption of money bills, and (3) the passage of private bills. And within at least the first two of these domains the preponderance of the Commons is such that the procedure of that chamber alone need be described. The procedure of the two chambers upon bills is substantially the same, although, as is illustrated by the fact that amendments to bills may be introduced in the Lords at any stage but in the Commons at only stipulated stages, the methods of conducting business in the upper house are more elastic than those prevailing in the lower.

**139. Fundamental Principles.**—The legislative omnipotence of Parliament has been emphasized sufficiently.[3] Any sort of measure upon any conceivable subject may be introduced and, if a sufficient

[1] The judicial functions of Parliament are described at some length in Anson, Law and Custom of the Constitution, I., Chap. 9. The principal work on the subject is C. H. McIlwain, The High Court of Parliament and its Supremacy (New Haven, 1910). On the House of Lords as a court see MacDonaugh, The Book of Parliament, 300–309; A. T. Carter, History of English Legal Institutions (London, 1902), 96–109; and W. S. Holdsworth, History of English Law, I., 170–193.

[2] Law and Custom of the Constitution, I., 52.

[3] See p. 45.

number of the members are so minded, enacted into law. No measure may become law until it has been submitted for the consideration of both houses, but under the terms of the Parliament Act of 1911 it has been rendered easy for money bills, and not impossible for bills of other sorts, to be made law without the assent of the House of Lords. In the ordinary course of things, a measure is introduced in one house, put through three readings, sent to the other house, put there through the same routine, deposited with the House of Lords to await the royal assent,[1] and, after having been assented to as a matter of course, proclaimed as law. Bills, as a rule, may be introduced in either house, by the Government or by a private member. It is important to observe, however, in the first place, that certain classes of measures must originate in one or the other of the houses, e. g., money bills in the Commons and bills of attainder and other judicial bills in the Lords, and, in the second place, that with the growth of the leadership of the Government in legislation the importance, if not the number, of privately introduced bills has tended steadily to be decreased, and likewise the chances of their enactment.

**140. Public Bills: First and Second Readings.**—The steps through which a public bill, whether introduced by the Government or by a private member, must pass in the Commons are still numerous, but by the reduction of some of them to sheer formalities which involve neither debate nor vote the actual legislative process has been made much more expeditious than once it was. The necessary stages in the enactment of a bill in either house are, as a rule, five: first reading, second reading, consideration by committee, report from committee, and third reading. Formerly the introduction of a measure involved almost invariably a speech explaining at length the nature of the proposal, followed by a debate and a vote, sometimes consuming, in all, several sittings. Nowadays only very important Government bills are introduced in this manner. In the case of all other bills the first reading has become a mere formality, involving nothing more than a motion on the part of a member, official or private, for permission to bring in a measure and the giving of leave by the House, almost invariably without discussion. Upon all measures save the most important Government projects, opportunity for debate is first afforded at the second reading, although the discussion at this stage must relate to general principles rather than to details. By the adoption of a motion that the bill be read a second time "this day six months" (or at some other date falling beyond the anticipated limits of the session) a measure may at this point be killed.

[1] Except that money bills remain in the custody of the Commons.

**141. Public Bills: Later Stages.**—A bill which survives the second reading is "committed." Prior to 1907 it would go normally to the Committee of the Whole. Nowadays it goes there if it is a money bill or a bill for confirming a provisional order,[1] or if, on other grounds, the House so directs; otherwise it goes to one of the four standing committees, assignment being made by the Speaker. This is the stage at which the provisions of the measure are considered in detail and amendments are introduced. After the second reading, however, a bill may be referred to a select committee, and in the event that this is done a step is added to the process, for after being returned by the select committee the measure goes to the Committee of the Whole or to one of the standing committees. Eventually the bill is reported back to the House. If reported by a standing committee or, in amended form by the Committee of the Whole, it is considered by the House afresh and in some detail; otherwise, the "report stage" is omitted. Finally comes the third reading, the question now being whether the House approves the measure as a whole. At this stage any amendment beyond verbal changes necessitates recommitment. The carrying of a measure through these successive stages is spread over, as a rule, several days, and sometimes several weeks, but it is not impossible that the entire process be completed during the period of a sitting. Having been adopted by the originating house, a bill is taken by a clerk to the other house, there to be subjected to substantially the same procedure. If amendments are introduced, it is sent back in order that the suggested changes may be considered by the first house. If they are agreed to, the measure is sent up for the royal approval. If they are rejected and an agreement between the two houses cannot be reached, the measure falls.[2]

[1] See p. 138.

[2] The legislative process is summed up aptly by Lowell as follows: "Leaving out of account the first reading, which rarely involves a real debate, the ordinary course of a public bill through the House of Commons gives, therefore, an opportunity for two debates upon its general merits, and between them two discussions of its details, or one debate upon the details if that one results in no changes, or if the bill has been referred to a standing committee. When the House desires to collect evidence it does so after approving of the general principle, and before taking up the details. Stated in this way the whole matter is plain and rational enough. It is, in fact, one of the many striking examples of adaptation in the English political system. A collection of rules that appear cumbrous and antiquated, and that even now are well-nigh incomprehensible when described in all their involved technicality, have been pruned away until they furnish a procedure almost as simple, direct, and appropriate as any one could devise." Government of England, I., 277–278. The procedure of the House of Commons on public bills is described in Lowell, Government of England, I., Chaps. 13, 17, 19; Anson, Law and Custom of

**142. Money Bills: Appropriation and Finance Acts.**—The procedure followed in the handling of money bills differs materially from that which has been described. Underlying it are two fundamental principles, incorporated in the standing orders of the House of Commons during the first quarter of the eighteenth century. One of them prescribes that no petition or motion for the granting of money shall be proceeded upon save in Committee of the Whole. The other forbids the receiving of any petition, or the proceeding upon any motion, for a charge upon the public revenue unless recommended from the crown. Although these principles apply technically only to appropriations, they have long been observed with equal fidelity in respect to the raising of revenue. All specific measures for the expending of money and all proposals for the imposing of fresh taxation or the increase of existing taxation must emanate from the crown, i. e., in practice from the cabinet. A private member may go no further in this direction than to introduce resolutions of a wholly general character favoring some particular kind of expenditure, except that it is within his right to move to repeal or to reduce taxes which the Government has not proposed to modify.

Two great fiscal measures are introduced and carried through annually: the Appropriation Act, in which are brought together all the grants for the public services for the year, and the Finance Act in which are comprised all regulations relating to the revenue and the national debt. Before the close of the fiscal year (March 31) the ministry submits to the Commons a body of estimates for the "supply services," drawn up originally by the government departments, scrutinized by the Treasury, and approved by the cabinet. Early in the session the House resolves itself into a Committee of the Whole on Supply, by which resolutions of supply are discussed, adopted, and reported. These resolutions are embodied in bills which, for purposes of convenience, are passed at intervals during the session. But at the close all of them are consolidated in one grand Appropriation Act.[1] Upwards of half of the public expenditures, it is to be observed, e. g., the Civil List, the salaries of judges, pensions, and interest on the

the Constitution, I., 240–267; Low, Governance of England, Chap. 4; Moran, English Government, Chap. 14; Marriott, English Political Institutions, Chap. 11; Todd, Parliamentary Government, II., 138–163; Ilbert, Parliament, Chap. 3; Redlich, Procedure of the House of Commons, III., 85–112; and May, Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, Chap. 18. See also G. Walpole, House of Commons Procedure, with Notes on American Practice (London, 1902), and C. P. Ilbert, Legislative Methods and Forms (Oxford, 1901), 77–121.

[1] Before the lapse of a twelvemonth unforeseen contingencies require invariably the voting of "supplementary grants."

national debt, are provided for by permanent acts imposing charges upon the Consolidated Fund and do not come annually under parliamentary review.

**143. The Budget.**—As soon as practicable after the close of the fiscal year the House, resolved for the purpose into Committee of Ways and Means, receives from the Chancellor of the Exchequer his Budget, or annual statement of accounts. The statement comprises regularly three parts: a review of revenue and expenditure during the year just closed, a provisional balance-sheet for the year to come, and a series of proposals for the remission, modification, or fresh imposition of taxes. Revenues, as expenditures, are in large part "permanent," yet a very considerable proportion are provided for through the medium of yearly votes. In Committee of Ways and Means the House considers the Chancellor's proposals, and after they have been reported back and embodied in a bill they are carried with the assent of the crown, though no longer necessarily of the Lords, into law. Prior to 1861 it was customary to include in the fiscal resolutions and in the bill in which they were embodied only the annual and temporary taxes, but in consequence of the Lords' rejection, in 1860, of a separate finance bill repealing the duties on paper it was made the practice to incorporate in a single bill—the so-called Finance Bill—provision for all taxes, whether temporary or permanent. In practice the House of Commons rarely refuses to approve the financial measures recommended by the Government. The chamber has no power to propose either expenditure or taxation, and the right which it possesses to refuse or to reduce the levies and the appropriations asked for is seldom used. "Financially," says Lowell, "its work is rather supervision than direction; and its real usefulness consists in securing publicity and criticism rather than in controlling expenditure." [1] The theory underlying fiscal procedure has been summed up lucidly as follows: "The Crown demands money, the Commons grant it, and the Lords assent to the grant; [2] but the Commons do not vote money unless it be required by the Crown; nor impose or augment taxes unless they be necessary for meeting the supplies which they have voted or are about to vote, and for supplying general deficiencies in the revenue. The Crown has no concern in the nature or distribution of the taxes; but the foundation of all Parliamentary taxation is its necessity for the public service as declared by the Crown through its constitutional advisers." [3]

[1] Government of England, I., 288.

[2] Since the enactment of the Parliament Bill of 1911, as has been observed, the assent of the Lords is not necessary. See p. 112.

[3] The procedure involved in the handling of money bills is described in Lowell, Government of England, I., Chap. 14; Anson, Law and Custom of the Constitution,

**144. Private Bills: Nature and Procedure.**—In the matter of procedure there is no distinction between a Government bill and a private member's bill. Both are public bills. But a private bill is handled in a manner largely peculiar to itself. A public bill is one which affects the general interests of the state, and which has for its object presumably the promotion of the common good. A private bill is one which has in view the interest of some particular locality, person, or collection of persons. The commonest object of private bills is to enable private individuals to enter into combination to undertake works of public utility—the building of railways or tramways, the construction of harbors or piers, the draining of swamps, the supplying of water, gas, or electricity, and the embarking upon a wide variety of other enterprises which in the United States would be regulated chiefly by state legislatures and city councils—at their own risk and, in part at least, for their own profit. All private bills originate in petitions, which must be submitted in advance of the opening of the session during which they are to be considered. Their presentation and the various stages of their progress are governed by very detailed and stringent regulations, and fees are required from both promoters and opponents, so that the enactment of a private bill of importance becomes for the parties directly concerned an expensive process, and for the Exchequer a source of no inconsiderable amount of revenue.

After having been scrutinized and approved by parliamentary officials known as Examiners of Petitions for Private Bills, a private bill is introduced in one of the two houses.[1] Its introduction is equivalent to its first reading. At its second reading debate may take place upon the principle of the measure, after which the bill, if opposed, is referred to a Private Bill Committee consisting of four members and a disinterested referee. If the bill be not opposed, i. e., if no adverse petition has been filed by property owners, corporations, or other interests, the committee of reference, under a standing order of 1903, consists of the Chairman and Deputy Chairman of Ways and Means, two other mem-

I., 268–281; Walpole, Electorate and Legislature, Chap. 7; Todd, Parliamentary Government, II., 186–271; Ilbert, Parliament, Chap. 4; Redlich, Procedure of the House of Commons, III., 113–174; May, Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, Chap. 21. See also E. Porritt, Amendments in the House of Commons Procedure since 1881, in *American Political Science Review*, Nov., 1908. Among numerous works on taxation in England the standard authority is S. Dowell, History of Taxation and Taxes in England from the Earliest Times to the Year 1885, 4 vols. (2d ed., London, 1888).

[1] To facilitate their consideration, such measures are distributed approximately equally between the two houses. This is done through conference of the Chairmen of Committees of the two houses, or their counsel, prior to the assembling of Parliament.

bers of the House, appointed by the Committee of Selection, and the Counsel to Mr. Speaker. The committee stage of a contested bill assumes an essentially judicial aspect. Promoters and opponents are represented by counsel, witnesses are examined, and expert testimony is taken. After being reported by committee, the measure goes its way under the same regulations as those controlling the progress of public bills.

**145. Provisional Orders.**—Two things are, however, to be noted. The first one is that while in theory the distinction between a public and a private bill is clear, in point of fact there is no little difficulty in drawing a line of demarcation, and the result has been the recognition of an indefinite class of "hybrid" bills, partly public and partly private in content and handled under some circumstances as the one and under others as the other, or even under a procedure combining features of both. The second fact to be observed is that, in part to reduce expense and in part to procure the good-will of the executive department concerned, it has become common for the promoters of enterprises requiring parliamentary sanction to make use of the device known as provisional orders. A provisional order is an order issued, after minute investigation, by a government department authorizing provisionally the undertaking of a project in behalf of which application has been made. It requires eventually the sanction of Parliament, but such orders are laid before the houses in groups by the several departments and their ratification is virtually assured in advance. It is pointed out by Lowell that during the years 1898–1901 not one-tenth of the provisional orders laid before Parliament were opposed, and but one failed of adoption.[1]

## VII. The Conduct of Business in the two Houses

"How can I learn the rules of the Commons?" was a question once put by an Irish member to Mr. Parnell. "By breaking them," was the philosophic reply. Representing, as it does, an accumulation through centuries of deliberately adopted regulations, interwoven and overlaid with unwritten custom, the code of procedure by which the conduct

[1] Government of England, I., 385. On private bill legislation see Lowell, I., Chap. 20; Anson, Law and Custom of the Constitution, I., 291–300; May, Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, Chaps. 24–29; Courtney, Working Constitution of the United Kingdom, Chap. 18; MacDonaugh, The Book of Parliament, 398–420. The standard treatise upon the subject is F. Clifford, History of Private Bill Legislation, 2 vols. (London, 1885–1887). A recent book of value is F. H. Spencer, Municipal Origins; an Account of English Private Bill Legislation relating to Local Government, 1740–1835, with a Chapter on Private Bill Procedure (London, 1911).

of business in the House of Commons is governed is indeed intricate and forbidding. Lord Palmerston admitted that he never fully mastered it, and Gladstone was not infrequently an inadvertent offender against the "rules of the House." Prior to the nineteenth century the rules were devised, as is pointed out by Anson, with two objects in view: to protect the House from hasty and ill-considered action pressed forward by the king's ministers, and to secure fair play between the parties in the chamber and a hearing for all. It was not until 1811 that business of the Government was permitted to obtain recognized precedence on certain days; but the history of the procedure of the Commons since that date is a record of (1) the general reduction of the time during which private members may indulge in the discussion of subjects or measures lying outside the Government's legislative programme, (2) increasing limitation of the opportunity for raising general questions at the various stages of Government business, and (3) the cutting down of the time allowed for discussing at all the projects to which the Government asks the chambers' assent.[1]

**146. Rules.**—The rules governing debate and decorum are not only elaborate but, in some instances, of great antiquity. In so far as they have been reduced to writing they may be said to comprise (1) "standing orders" of a permanent character, (2) "sessional orders," operative during a session only, and (3) "general orders," indeterminate in respect to period of application. In the course of debate all remarks are addressed to the Speaker and in the event that the floor is desired by more than one member it rests with the Speaker to designate, with scrupulous impartiality, who shall have it. When a "division" is in progress and the doors are closed members speak seated and covered, but at all other times they speak standing and uncovered. A speech may not be read from manuscript, and it is within the competence of the Speaker not only to warn a member against irrelevance or repetition but to compel him to terminate his remarks.[2] A member whose conduct is reprehensible may be ordered to withdraw and, upon vote of the House, may be suspended from service. Except in committee, a member may not speak twice upon the same question, although he may be allowed the floor a second time to explain a portion of his speech which has been misunderstood. Undue obstruction is not tolerated, and the Speaker may decline to put a motion which he considers dilatory.

**147. Closure and the Guillotine.**—For the further limitation of debate two important and drastic devices are at all times available. One is ordinary closure and the other is "the guillotine." Closure dates

[1] Anson, Law and Custom of the Constitution, I., 253.

[2] On parliamentary oratory see Graham, The Mother of Parliaments, 203–224.

originally from 1881. It was introduced in the standing orders of the House in 1882, and it assumed its present form in 1888.[1] It sprang from the efforts of the House to curb the intolerably obstructionist tactics employed a generation ago by the Irish Nationalists, but by reason of the increasing mass of business to be disposed of and the tendency of large deliberative bodies to waste time, it has been found too useful to be given up. "After a question has been proposed," reads Standing Order 26, "a member rising in his place may claim to move 'that the Question be now put,' and unless it shall appear to the Chair that such motion is an abuse of the Rules of the House, or an infringement of the rights of the minority, the Question 'that the Question be now put' shall be put forthwith and decided without amendment or debate." Discussion may thus be cut off instantly and a vote precipitated. Closure is inoperative, however, unless the number of members voting in the majority for its adoption is at least one hundred, or, in a standing committee, twenty.

A more generally effective device by which discussion is limited and the transaction of business is facilitated is that known as "closure by compartments," or "the guillotine." When this is employed the House in advance of the consideration of a bill agrees upon an allotment of time to the various parts or stages of the measure, and at the expiration of each period debate, whether concluded or not, is closed, a vote is taken, and a majority adopts that portion of the bill upon which the guillotine has fallen. In recent years this device has been employed almost invariably when an important Government bill is reserved for consideration in Committee of the Whole. Its advantage is the saving of time and the ensuring that by a given date final action upon a measure shall have been taken. Prior to the middle of the nineteenth century liberty of discussion in the Commons was all but unrestrained, save by what an able authority on English parliamentary practice has termed "the self-imposed parliamentary discipline of the parties."[1] The enormous change which has come about is attributable to two principal causes, congestion of business and the rise of obstructionism. The effect has been, among other things, to accentuate party differences and to involve occasional disregard of the rights of minorities.[2]

**148. Votes and Divisions.**—When debate upon the whole or a portion of a measure is terminated there takes place a vote, which may or may

[1] The name was first employed in 1887.

[2] Redlich, Procedure of the House of Commons, I., 133–212; Graham, The Mother of Parliaments, 158–172. An excellent illustration of the use of the guillotine is afforded by the history of the passage of the National Insurance Bill of 1911. See *Annual Register* (1911), 232–236.

not involve, technically, a "division." The Speaker or Chairman states the question to be voted upon and calls for the ayes and noes. He announces the apparent result and, if his decision is not challenged, the vote is so recorded. If, however, any member objects, strangers are asked to withdraw (save from the places reserved for them), electric bells are rung throughout the building, the two-minute sand-glass is turned, and at the expiration of the time the doors are locked. The question is then repeated and another oral vote is taken. If there is still lack of acquiescence in the announced result, the Speaker orders a division. The ayes pass into the lobby at the Speaker's right and the noes into that at his left, and all are counted by four tellers designated by the Speaker, two from each side, as the members return to their places in the chamber. This method of taking a division has undergone but little change since 1836. Under a standing order of 1888 the Speaker is empowered, in the event that he considers a demand for a division dilatory or irresponsible, to call upon the ayes and noes to rise in their places and be counted; but there is seldom occasion for resort to this variation from the established practice. The device of "pairing" is not unknown, and when the question is one of political moment the fact is made obvious by the activity of the party "whips" in behalf of the interests which they represent.[1]

**149. Procedure in the Lords.**—The rules of procedure of the House of Lords are in theory simple, and in practice yet more so. Nominally, all measures of importance, after being read twice, are considered in Committee of the Whole, referred to a standing committee for textual revision, reported, and accorded final adoption or rejection. In practice the process is likely to be abbreviated. Few bills, for example, are actually referred to the revision committee. For the examination of such measures as seem to require it committees are constituted for the session, and others are created from time to time as need of them appears, but the comparative leisure of the chamber permits debate within the Committee of the Whole upon any measure which the members really care to discuss. Willful obstruction is all but unknown, so that there has never been occasion for the adoption of any form of closure. Important questions are decided, as a rule, by a division. When the question is put those members who desire to register an affirmative vote repair

[1] On the conduct of business in the Commons see Lowell, Government of England, I., Chaps. 15–16; Moran, English Government, Chap. 15; Walpole, Electorate and Legislature, Chap. 8; Ilbert, Parliament, Chap. 5; Redlich, Procedure of the House of Commons, II., 215–264, III., 1–41; May, Treatise on the Law, Privileges, Proceedings, and Usage of Parliament, Chaps, 8–12; Medley, Manual of English Constitutional History, 231–284; Graham, The Mother of Parliaments, 225–258; and MacDonaugh, The Book of Parliament, 217–247.

to the lobby at the right of the woolsack, those who are opposed to the proposal take their places in the corresponding lobby at the left, and both groups are counted by tellers appointed by the presiding officer. A member may abstain from voting by taking his station on "the steps of the throne," technically accounted outside the chamber. Prior to 1868 absent members were allowed to vote by proxy, but this indefensible privilege, abolished by standing order in the year mentioned, is likely never to be revived.[1]

[1] On the conduct of business in the Lords see Anson, Law and Custom of the Constitution, I., 281–291.

# CHAPTER VII

## POLITICAL PARTIES

### I. Parliamentarism and the Party System

**150. Government by Party.**—Intimately connected with the parliamentary scheme of government which has been described is the characteristic British system of government by party. Indeed, not merely is there between the two an intimate connection; they are but different aspects of the same working arrangement. The public affairs of the kingdom at any given time, as has appeared, are managed by the body of ministers, acting with and through a supporting majority in the House of Commons. These ministers belong to one or the other of the two great political parties, with only occasional and incidental representation of minor affiliated political groups. Their supporters in the Commons are, in the main, their fellow-partisans, and their tenure of power is dependent upon the fortunes of their party in Parliament and throughout the country. They are at once the working executive, the guiding agency in legislation, and the leaders and spokesmen of this party. Confronting them constantly is the Opposition, consisting of influential exponents of the contrary political faith who, in turn, lead the rank and file of their party organization; and if at any time the ministers in power lose their supporting majority in the Commons, whether through adverse results of a national election or otherwise, they retire and the Opposition assumes office. The parliamentary system and the party system are thus inextricably related, the one being, indeed, historically the product of the other. It was principally through the agency of party spirit, party contest, and party unity that there was established by degrees that single and collective responsibility of ministers which lies at the root of parliamentary government; and, but for the coherence and stability with which political activity is invested by party organization, the operation of the parliamentary system would be an impossibility. The law of the British constitution does not demand the existence of parties; on the contrary, it affords them no recognition or place. The conventions, however, both assume and require them.

**151. Two-Party Organization.**—The relationship which subsists between parliamentarism and party government is to be accounted for in no small measure by the fact that the number of great parties in the United Kingdom is but two. Certain continental nations, notably France and Italy, possess the forms of parliamentary government, adopted within times comparatively recent and taken over largely from Great Britain. In these countries, however, the multiplicity of parties effectually prevents the operation of the parliamentary system in the fashion in which that system operates across the Channel. Ministries must be made up invariably of representatives of a number of essentially independent groups. They are apt to be inharmonious, to be able to execute but indifferently the composite will of the Government coalition in the popular chamber, and, accordingly, to be short-lived. Despite the rise in recent decades of the Irish Nationalist and Labor groups, it is still true in Great Britain, as it has been since political parties first made their appearance there, that two leading party affiliations divide between themselves the allegiance of the mass of the nation. The defeat of one means the triumph of the other, and either alone is competent normally to govern independently if elevated to power. This means, on the one hand, a much more thoroughgoing predominance of the governing party than can be acquired by a single party in France or Italy and, on the other hand, a unique concentration of responsibility and, in turn, an increased responsiveness to the public will. The leaders of the one party for the time in the ascendancy govern the nation, by reason of the fact that, *being* the leaders of this party, they are selected without doubt or equivocation to fill the principal offices of state.[1]

[1] For a fuller exposition of the relations of party and the parliamentary system see Lowell, Government of England, I., Chap. 24. The best description of English parties and party machinery is that contained in Chaps. 24–37 of President Lowell's volumes. The growth of parties and of party organization is discussed with fullness and with admirable temper in M. Ostrogorski, Democracy and the Organization of Political Parties, trans. by F. Clarke, 2 vols. (London, 1902). A valuable monograph is A. L. Lowell, The Influence of Party upon Legislation in England and America, in *Annual Report of American Historical Association for 1901* (Washington, 1902), I., 319–542. An informing study is E. Porritt, The Break-up of the English Party System, in *Annals of American Academy of Political and Social Science*, V., No. 4 (Jan., 1895), and an incisive criticism is H. Belloc and H. Chesterton, The Party System (London, 1911). There is no adequate history of English political parties from their origins to the present day. G. W. Cooke, The History of Party from the Rise of the Whig and Tory factions in the Reign of Charles II. to the Passing of the Reform Bill, 3 vols. (London, 1836–1837) covers the subject satisfactorily to the end of the last unreformed parliament. Other party histories—as T. E. Kebbel, History of Toryism (London, 1886); C. B. R. Kent, The English Radicals (London, 1899); W. Harris, History of the Radical Party in Parliament

## II. Parties in the Later Eighteenth and Earlier Nineteenth Centuries

**152. Whigs and Tories.**—The seventeenth-century origins of political parties in England, the development of Whigs and Tories following the Revolution of 1688–1689, and the prolonged Whig supremacy during the reigns of George I. and George II., have been alluded to in another place.[1] During the eighteenth century the parliamentary system was but slowly coming into its own, and again and again party lines all but disappeared. The recurring rivalry of Whig and Tory elements, however, brought about gradually a habitual recognition of the responsibility of ministers, and this responsibility, in turn, reacted to accentuate party demarcation. The efforts of George III. to revive the royal prerogative had the effect of calling into existence a body of new Tories, not Jacobite, but Hanoverian, who supported the king in his purpose, and at the same time, of driving the forces of opposition to a closer union and more constant vigilance. Throughout the century the tone of party politics was continuously low. Bribery and other forms of corruption were rife, and the powers of government, both national and local, were in the hands regularly of an aristocratic minority which ruled in its own interest. The high-water mark of intrigue was reached in 1783 when the old Tories, led by Lord North, allied themselves with the old Whigs, led by Charles James Fox, to retain power and to curtail the influence of the king. The coalition was unsuccessful, and the defeat of Fox's India Bill, in December, 1783, became the occasion of the younger Pitt's elevation to the premiership, followed within three months by a national election which precipitated an end of the seventy years of Whig ascendancy.

**153. The Tory Ascendancy, 1783–1830.**—Throughout the ensuing forty-six years, or until 1830, the new Tory party continued almost uninterruptedly in power, although it is to be observed that after 1790 the composition and character of this party underwent important modification. The first decade of the period covered by the Pitt ministry (1784–1801) was a time of incipient but active propaganda in behalf of constitutional, financial, and social reform, and the government was not disinclined to favor a number of the changes which were

(London, 1885); and J. B. Daly, The Dawn of Radicalism (London, 1892)—cover important but restricted fields. An admirable work which deals with party organization as well as with party principles is R. S. Watson, The National Liberal Federation from its Commencement to the General Election of 1906 (London, 1907). For further party histories see p. 160, 166.

[1] See p. 39.

projected. The outbreak and progress of the Revolution in France, however, completely altered the situation. The great landowners, who constituted the dominating element in the Whig party, detested the principles of the Revolution and were insistent in season and out upon war with France. They secured the support of the parliamentary classes generally, and Pitt and his colleagues were forced to surrender to the apprehensions and demands of these elements. The war was declared by France, but it was provoked mainly by the hostile attitude of the English people and government. At home all reform propaganda was stamped out, and Tories and Whigs alike throughout the quarter-century of international conflict pointed habitually to the abuses by which the upheaval in France was accompanied as indicative of what might be expected in England, or anywhere, when once the way was thrown open for unrestrained innovation.

The Tories were in power during most of the war period and in 1815 their position was seemingly impregnable. During the years covered by the ministry of Lord Liverpool (1812–1827), however, their hold was gradually relaxed. They sought to secure for themselves the support of the masses and talked much of the aristocratic exclusiveness of the Whigs, yet they made it their first concern to maintain absolutely intact the constitution of the kingdom and the political and social order by which it was buttressed. As long as England was engaged in a life and death contest with Napoleon the staying of innovation was easy, but after 1815 the task became one of rapidly increasing difficulty. In the reign of George IV. (1820–1830) the more progressive of the Tory leaders, notably Canning, Huskisson, and Peel, recognized that the demands of the nation would have to be met at some points, and a number of liberalizing measures were suffered to be carried through Parliament, though none which touched directly the most serious problems of the day. In 1830 the resignation of the ministry of the Duke of Wellington marked the end of the prolonged Tory ascendancy, and with a ministry presided over by Earl Grey the Whigs returned to power. With the exception of a few brief intervals they and their successors, the Liberals, held office thereafter until 1874.[1]

[1] The party history of the period 1700–1792 is related admirably and in much detail in W. E. H. Lecky, History of England in the Eighteenth Century, 7 vols. (new ed., New York, 1903). Beginning with 1815, the best work on English political history in the earlier nineteenth century is S. Walpole, History of England from the Conclusion of the Great War in 1815, 6 vols. (new ed., London, 1902). A good general account is contained in I. S. Leadam, The History of England from the Accession of Anne to the Death of George II. (London, 1909), and W. Hunt, The History of England from the Accession of George III. to the Close of Pitt's First

## III. The Second Era of Whig [Liberal] Ascendancy, 1830–1874

**154. The Liberals and Reform.**—The political history of this second great era of Whig ascendancy falls into some four or five stages. The first, extending from the accession of the Grey ministry in 1830 to the parliamentary elections of 1841, was an epoch of notable reforms, undertaken and carried through mainly by the Whigs, with the co-operation of various radical elements and of discontented Tories. This was the period of the first Reform Act (1832), the emancipation of slaves in the British colonies (1833), the beginning of parliamentary appropriations for public education (1833), the Factory Act of 1833, the New Poor Law (1834), the Municipal Corporations Act (1835), and a number of other measures designed to meet urgent demands of humanity and of public interest. This was the time, furthermore, at which the party nomenclature of later days was brought into use. The name Whig was superseded altogether by that of Liberal, while the name Tory, though not wholly discontinued in everyday usage, was replaced largely by the term Conservative.[1] The Liberals were in these years peculiarly the party of reform, but it must not be inferred that the Conservatives resisted all change or withheld support from all measures of amelioration.

**155. From Peel to Palmerston.**—The second stage of the period under survey was that comprised by the Conservative ministry of Sir Robert Peel, 1841–1846, established in consequence of the decisive defeat of the Whigs at the elections of 1841. The memorable achievement of the Peel government was the repeal of the Corn Laws and the casting off of substantially the whole of the protective system; but the tariff policy of the premier divided the Conservative party into the protectionists or old Conservatives, led by Disraeli and Lord Derby, and the free trade or liberal Conservatives, led by Aberdeen

Administration (London, 1905). Briefer accounts of the period 1783–1830 will be found in May and Holland, Constitutional History of England, I., 409–440, and in Cambridge Modern History, IX., Chap. 22 and X., Chaps. 18–20 (see bibliography, pp. 856–870). Important biographies of political leaders include A. von Ruville, William Pitt, Graf von Chatham, 3 vols. (Stuttgart and Berlin, 1905); W. D. Green, William Pitt, Earl of Chatham (London, 1901); E. Fitzmaurice, Life of William, Earl of Shelburne, 3 vols. (London, 1875–1876); Lord P. H. Stanhope, Life of Pitt, 4 vols. (London, 1861–1862); Lord Rosebery, Pitt (London, 1891); and Lord J. Russell, Life of Charles James Fox, 3 vols. (1859–1867).

[1] The name Conservative was employed by Canning as early as 1824. Its use was already becoming common when, in January, 1835, Peel, in his manifesto to the electors of Tamworth, undertook an exposition of the principles of what he declared should be known henceforth as the Conservative—not the Tory—party.

and Gladstone, and the breach enabled the Liberals, under Lord John Russell, to recover office in 1847. A third stage of the period, i. e., 1847 to 1859, was one of ministerial instability. Disputes between Russell and Palmerston, the foreign minister, undermined the Liberal position, and in 1852 the Conservatives, under the leadership of Derby, returned to power. In 1853, however, the free trade Conservatives joined the Liberals, overthrew Derby, and placed in office a coalition ministry under Aberdeen. This government maintained itself until 1855, when, by reason of discontent aroused by his management of England's part in the Crimean War, Aberdeen resigned and was succeeded by Palmerston, at the head of another Liberal ministry. Foreign difficulties drove Palmerston from office early in 1858, and the establishment of a second Derby ministry marked a brief return of the Conservatives to control. Defeated, however, on a resolution censuring the Government for the inadequacy of the reform bill introduced by it in 1859, and also for the failure of Lord Derby to prevent the war between France and Austria, the ministry resigned, in April, 1859, and Lord Palmerston returned to power, with Gladstone and Lord John Russell as colleagues. Gladstone's acceptance of office under Palmerston marked the final severance of the Peelites from the Conservative party and the abandonment of all hope of the reconstruction for which both Gladstone and Derby had labored.

**156. Party Regeneration.**—A fourth, and final, stage of the Liberal period covered the years 1859 to 1874. Its importance arises not merely from the fact that the culmination of the power of the Liberals during the nineteenth century was attained at this point, but from the further fact that it was during these years that the Liberal party was transformed and popularized so as to be made for the first time really worthy of the name which it bears. As long as Palmerston lived the Liberals of the old school, men who disliked radicalism and were content with the reform of 1832, were in the ascendancy, but after the premier's death, October 18, 1865, new ideas and influences asserted themselves and a new Liberal party came rapidly to the fore. This regenerated party, whose leader was Gladstone, rejected definitely the ideal of *laissez-faire*, took over numerous principles of the Radicals, and, with the watchwords of "peace, retrenchment, and reform," began to insist upon a broader parliamentary franchise and upon fresh legislation for the protection and general betterment of the masses. The new liberalism was paralleled, however, by a new conservatism, whose principal exponent was Disraeli. The new Conservatives likewise advocated franchise reform and legislation for the people, although they put more emphasis upon the latter than upon the former;

and they especially favored a firm foreign policy, an extension of British interests in all parts of the world, and the adoption of a scheme of colonial federation. They appeared, at least, to have less regard for peace and for economy than had the Liberals.

The temper and tendencies of the parties as they gradually assumed shape during the third quarter of the nineteenth century have been characterized effectively by a recent writer as follows: "The parties of which Gladstone and Disraeli were the chiefs were linked by continuous historical succession with the two great sections or factions of the aristocracy, or hereditary oligarchy, which ruled Great Britain in the eighteenth century. But each had been transformed by national changes since the Reform Bill. The Whigs had become Liberals, the Tories had become Conservatives. The Liberal party had absorbed part of the principles of the French Revolution. They stood now for individual liberty, laying especial stress on freedom of trade, freedom of contract, and freedom of competition. They had set themselves to break down the rule of the landowner and the Church, to shake off the fetters of Protection, and to establish equality before the law. Their acceptance of egalitarian principles led them to adopt democratic ideals, to advocate extension of the suffrage, and the emancipation of the working classes. Such principles, though not revolutionary, are to some extent disruptive in their tendency; and their adoption by the Liberals had forced the Tory party to range themselves in defense of the existing order of things. They professed to stand for the Crown, the Church, and the Constitution. They were compelled by the irresistible trend of events to accept democratic principles and to carry out democratic reforms. They preferred, in fact, to carry out such reforms themselves, in order that the safeguards which they considered necessary might be respected. Democratic principles having been adopted, both parties made it their object to redress grievances; but the Conservatives showed a natural predisposition to redress those grievances which arose from excessive freedom of competition, the Liberals were the more anxious to redress those which were the result of hereditary or customary privilege. The harmony of the State consists in the equilibrium between the two opposing forces of liberty and order. The Liberals laid more stress upon liberty, the Conservatives attached more importance to order and established authority." [1]

**157. The First Gladstone Ministry.**—Upon the death of Palmerston in 1865 Lord John Russell became premier a second time, but in the course of the following year a franchise reform bill brought forward by the Government was defeated in the Commons, through the instru-

[1] S. Leathes, in Cambridge Modern History, XII., 30–31.

mentality chiefly of a group of old Liberals (the "Adullamites") who opposed modification of the electoral system, and by curious circumstance it fell to the purely Conservative Derby-Disraeli ministry of 1866–1868 not only to carry the first electoral reform since 1832 but to impart to that reform a degree of thoroughness upon which none save the most advanced radicals had cared to insist. The results of the doubling of the electorate were manifest in the substantial majority which the new Liberals acquired at the elections of 1868, and the Disraeli ministry (Derby had retired early in the year) gave place to a government presided over by the indubitable leader of the new Liberal forces, Gladstone. The years 1868–1874, covered by the first Gladstone ministry, were given distinction by a remarkable series of reforms, including the disestablishment of the Church in Ireland (1869), the enactment of an Irish land bill (1870), the institution of national control of elementary education (1870), and the adoption of the Australian ballot in parliamentary elections (1872). Defeated at last, however, on an Irish university bill, the ministry resigned, and when, at the elections of 1874, the country was appealed to, the Conservatives obtained a clear parliamentary majority of fifty seats. This was the first really dependable majority, indeed, which the party had possessed since 1842. Disraeli became prime minister and Derby minister for foreign affairs.[1]

## IV. The Second Era of Conservative Ascendancy, 1874–1905

**158. The Question of Irish Home Rule.**—During the five years covered by the life of the second Disraeli ministry British imperialism reached flood tide. The reforms of the Gladstone government were

[1] The political history of the period 1830–1874 is covered very satisfactorily in W. N. Molesworth, History of England from the Year 1830–1874, 3 vols. (London, 1874). Other general works include: Walpole, History of England, vols. 3–6, extending to 1856; H. Paul, History of Modern England, 5 vols. (London, 1904–1906), vols. 1–3, beginning with 1845; J. McCarthy, History of Our Own Times from the Accession of Queen Victoria, 7 vols. (1877–1905), vols. 1–3, beginning with the events of 1837; J. F. Bright, History of England, 5 vols. (London, 1875–1894), vol. 4; and S. Low and L. C. Sanders, History of England during the Reign of Victoria (London, 1907). Briefer treatment will be found in May and Holland, Constitutional History of England, I., 440–468, III., 67–88, and in Cambridge Modern History, XI., chaps. 1, 11, 12 (see bibliography, pp. 867–873). Biographies of importance include S. Walpole, Life of Lord John Russell, 2 vols. (London, 1889); H. Maxwell, Life of the Duke of Wellington, 2 vols. (London, 1899); J. Morley, Life of William E. Gladstone, 3 vols. (London, 1903); J. R. Thursfield, Peel (London, 1907); W. F. Monypenny, Life of Benjamin Disraeli, Earl of Beaconsfield (London, 1910–1912), vols. 1–2, covering the years 1804–1846; and S. Lee, Queen Victoria, a Biography (rev. ed., London, 1904).

not undone, but the Conservative leaders interested themselves principally in foreign and colonial questions, and home affairs received but scant attention. The result was public discontent, and at the elections of 1880 the Liberals obtained a parliamentary majority of more than one hundred seats. It remained for the second Gladstone government, established at this point, to adjust a number of difficulties on the frontiers of the Empire; but the heart of the ministry was not in this sort of work and the way was cleared as speedily as possible for a return to the consideration of problems of a domestic nature. In 1884 the Representation of the People Act was carried, and in 1885 the Redistribution of Seats Act. But now, and throughout a decade and a half following, the question which overshadowed all others was that of Home Rule for Ireland. Upon this issue, in its variety of aspects, governments henceforth rose and fell, parties were disrupted and re-aligned. In 1885 the Parnellites, or Irish Nationalists, incensed because of Gladstone's indifference to Home Rule, and taking advantage of the ministry's unpopularity arising from the failure of its Egyptian policy, compassed the defeat of the Government on a measure relating to the taxing of beer and spirits. The Marquis of Salisbury, who after the death of Lord Beaconsfield, in 1881, had become leader of the Conservatives, made up a government; but, absolutely dependent upon the Irish Nationalist alliance and yet irrevocably committed against Home Rule, the Salisbury ministry found itself from the outset in an impossible position.

**159. The Liberal Unionists.**—The elections at the end of 1885 yielded the Conservatives 249 seats, the Irish Nationalists 86, and the Liberals 335, and January 28, 1886, the Salisbury ministry retired. Gladstone returned to power and Home Rule took its place in the formal programme of the Liberal party. Then followed, April 8, 1886, the introduction of the first of Gladstone's memorable Home Rule bills. The measure accorded the Irish a separate parliament at Dublin, cut them off from representation at Westminster, and required them to bear a proportionate share of the expenses of the Imperial Government. It was thrown out by the Commons on the second reading. The Conservatives opposed it solidly, many of the Irish Nationalists were dissatisfied with it, and upwards of a hundred Liberal members, led by Joseph Chamberlain, flatly refused to follow the majority of their fellow-partisans in voting for it. Under the name of Liberal Unionists these dissenters eventually broke entirely from their earlier affiliation; and, inclining more and more toward the position occupied by the Conservatives, they ended by losing their identity in the ranks of that party. Their accession, however, brought the Conservatives

new vigor, new issues, and even a new name, for in more recent days the term Conservative has been supplanted very generally by that of Unionist.

**160. Second Salisbury and Fourth Gladstone Ministries.**—The defeat of Home Rule was followed by a national election, the result of which was the return of 316 Conservatives, 78 Liberal Unionists, 191 Gladstonian Liberals, and 85 Irish Nationalists. The combined unionists had a majority of 118, and July 26, 1886, the short-lived third Gladstone government was succeeded by a second ministry presided over by the Marquis of Salisbury. Home Rule, however, was not dead. During the years of the Salisbury ministry (1886–1892) the authorities were obliged to devote much attention to Irish affairs, and in 1892 the Liberals were returned to office on a platform which stipulated expressly Home Rule for Ireland.[1] The Conservative appeal to the country at this time was made on the ground, first, that Home Rule should be resisted, and, second, that the Government's achievements in reform and constructive legislation entitled the party to continuance in power; but in the new parliament there was an adverse majority of forty, and August 18 Gladstone, for the fourth time, was requested to form a ministry.[2] The elections of 1892 are of interest by reason of the fact that they marked the first appearance of independent labor representatives in Parliament. Miners' delegates and an agricultural laborer had been elected before, but they had identified themselves in all instances with the radical wing of the Liberals. There were now returned, however, four members, including John Burns and Keir Hardie, who chose to hold aloof and, as they expressed it, "to sit in opposition until they should cross the house to form a labor government." The Home Rule bill which Gladstone introduced February 13, 1893, differed from its predecessor of 1886 principally in not excluding the Irish from representation at Westminster. It was passed in the House of Commons, although by an ultimate majority of but thirty-four, but in the Lords it was rejected by a vote of 419 to 41. In the face of an obstacle so formidable as that imposed by the adverse majority in the upper chamber it appeared useless to press the issue. The Lords, whose power in legislation became at this point greater than at any time since 1832, systematically balked the

[1] This was the "Newcastle Programme," drawn up at a convention of the National Liberal Federation at Newcastle in October, 1891. Items in the programme, in addition to Home Rule, included the disestablishment of the Church in Wales and Scotland, a local veto on the sale of intoxicating liquors, the abolition of the plural franchise, and articles defining employers' liability and limiting the hours of labor.

[2] C. A. Whitmore, Six Years of Unionist Government, 1886–1892 (London, 1892).

Government at every turn, and March 3, 1894, Gladstone, aged and weary of parliamentary strife, retired from office. His last speech in the Commons comprised a sharp arraignment of the House of Lords, with a forecast of the clash which eventually would lead (and, in point of fact, has led) to the reconstitution of that chamber.

**161. Third and Fourth Salisbury Ministries.**—For the time the Earl of Rosebery, who had been foreign secretary, assumed the premiership and there was no break in the Government's policy. In June, 1895, however, the ministry suffered a defeat on the floor of the Commons, and the Marquis of Salisbury was a third time invited to form a government. The retirement of Gladstone brought to light numerous rifts within the Liberal party, and when the new ministry, in July, appealed to the country, with Home Rule as a preponderating issue, its supporters secured in the Commons a majority of 152 seats over the Liberals and Nationalists combined. The Liberal Unionists returned 71 members, and to cement yet more closely the Conservative-Unionist alliance Lord Salisbury made up a ministry in which the Unionist elements were ably represented by Joseph Chamberlain as Colonial Secretary, Viscount Goschen as First Lord of the Admiralty, and the Duke of Devonshire as President of the Council. The premier himself returned to the post of Foreign Secretary, and his nephew, Arthur J. Balfour, now become again Government leader in the Commons, to that of First Lord of the Treasury. The accession of the third Salisbury ministry marked the beginning of a Unionist ascendancy which lasted uninterruptedly a full decade. In 1902 Lord Salisbury, whose fourth ministry, dating from the elections of 1900, was continuous with his third, retired from public life, but he was succeeded in the premiership by Mr. Balfour, and the personnel and policies of the Government continued otherwise unchanged.[1]

**162. Unionist Imperialism: the Elections of 1900.**—During the larger part of this Unionist decade the Liberal party, rent by factional disputes and personal rivalries, afforded but ineffective opposition.[2]

[1] The most useful works on the party history of the period 1874–1895 are Paul, History of Modern England, vols. 4–5, and Morley, Life of W. E. Gladstone, vol. 3. J. McCarthy's History of Our Own Times, vols. 4–6, covers the ground in a popular way. Useful brief accounts are May and Holland, Constitutional History of England, III., 88–127, and Cambridge Modern History, XII., Chap. 3 (bibliography, pp. 853–855). An excellent book is H. Whates, The Third Salisbury Administration, 1895–1900 (London, 1901).

[2] The two principal aspirants to the Gladstonian succession were Lord Rosebery and Sir William Vernon-Harcourt. Rosebery represented the imperialistic element of Liberalism and advocated a return of the party to the general position which it had occupied prior to the split on Home Rule. Harcourt and the majority

The Home Rule question fell into the background; and although the Unionists carried through a considerable amount of social and industrial legislation, the interests of the period center largely in the Government's policies and achievements within the domain of foreign and colonial affairs. The most hotly contested issue of the decade was imperialism; the most commanding public figure was Joseph Chamberlain; the most notable enterprise undertaken was the war in South Africa. In 1900 it was resolved by the ministerial leaders to take advantage of the public spirit engendered by the war to procure for the Unionists a fresh lease of power. Parliament was dissolved and, on the eve of the announcement of the annexation of the Transvaal, a general election was held. The Liberals, led since early in 1899 by Sir Henry Campbell-Bannerman, charged the Unionists with neglect of social and industrial matters, pledged themselves to educational, housing, and temperance reform, and sought especially to convince the electorate that they might be intrusted with safety to defend the legitimate interests of the Empire. The Government forced the fight upon the issue of South African policy almost exclusively, and, representing the opposition as "Little Englanders," went before the people with the argument that from the course that had been entered upon in South Africa there could be no turning back, and that the present ministry was entitled to an opportunity to carry to completion the work that it had begun. The appeal was altogether successful. The Conservatives obtained 334 seats and the Liberal Unionists 68—a total of 402; while the Liberals and Laborites carried but 186 and the Nationalists 82—a total of 268. The Government majority in the new parliament was thus 134, almost precisely that of 1895.[1]

After the elections dissension within the Liberal ranks broke out afresh. The Rosebery wing maintained that, the South African war having been begun, it was the duty of all Englishmen to support it, and that the Unionist government should be attacked only on the ground of mismanagement. In July, 1901, Campbell-Bannerman, impelled by the weakness of his position, demanded of his fellow-partisans that they either ratify or repudiate his leadership of the party

of the party opposed imperialism and insisted upon attention rather to a programme of social reform. From Gladstone's retirement, in 1894, to 1896 leadership devolved upon Rosebery, but from 1896 to the beginning of 1899 Harcourt was the nominal leader, although Rosebery, as a private member, continued hardly less influential than before.

[1] W. Clarke, The Decline in English Liberalism, in *Political Science Quarterly*, Sept., 1901; P. Hamelle, Les élections anglaises, in *Annales des Sciences Politiques*, Nov., 1900.

in the Commons. Approval was accorded, but no progress was realized toward an agreement upon policies. To careful observers it became clear that there could be no effective revival of Liberalism until the war in South Africa should have been terminated and the larger imperial problems involved in it solved. For a time the only clear-cut parliamentary opposition offered the Government was that of the frankly pro-Boer Nationalists.

## V. The Liberal Revival

**163. The Issue of Tariff Reform.**—The rehabilitation of the Liberal party came during the years 1902–1905. It was foreshadowed by the famous Chesterfield speech of Lord Rosebery, delivered December 16, 1901, although the immediate effect of that effort was but to accentuate party cleavages,[1] and it was made possible by a reversion of the national mind from the war to domestic questions and interests. More specifically, it was the product of opposition to the Government's Education Act of 1902, of public disapproval of what seemed to be the growing arrogance of the Unionist majority in the House of Lords, and, above all, of the demoralization which was wrought within the ranks of Unionism by the rise of the issue of preferential tariffs. In a speech to his constituents at Birmingham, May 15, 1903, Mr. Chamberlain, but lately returned from a visit to South Africa and now at the height of his prestige, startled the nation by declaring that the time had come for Great Britain to abandon the free trade doctrines of the Manchester school and to knit the Empire more closely together, and at the same time to promote the economic interests of both the colonies and the mother country, by the adoption of a system of preferential duties on imported foodstuffs. Later in the year the gifted exponent of this revolutionary programme entered upon a vigorous speaking campaign in defense of his proposals, and there was set up a large and representative tariff commission which was charged with the task of framing, after due investigation, a tariff system which would meet the needs alleged to exist. Among the Unionist leaders there arose forthwith a division of opinion which portended open

[1] In this speech, delivered at a great Liberal meeting, there was outlined a programme upon which Rosebery virtually offered to resume the leadership of his party. The question of Boer independence was recognized as settled, but leniency toward the defeated people was advocated. It was maintained that at the close of the war there should be another general election. And the overhauling of the army, of the navy, of the educational system, and of the public finances, was marked out as an issue upon which the Liberals must take an unequivocal stand, as also temperance reform and legislation upon the housing of the poor.

rupture. The rank and file of the party was nonplussed and undecided, and throughout many months the subject engrossed attention to the exclusion of very nearly everything else.[1]

In this situation the Liberals found their opportunity. All but unanimously opposed to the suggested departure, they assumed with avidity the rôle of defenders of England's "sacred principle of free trade" and utilized to the utmost the appeal which could now be made to the working classes in behalf of cheap bread. Mr. Chamberlain denied that his scheme meant a wholesale reversal of the economic policy of the nation, but in the judgment of most men the issue was joined squarely between the general principle of free trade and that of protection. Throughout 1904 and 1905 the Government found itself increasingly embarrassed by the fiscal question, as well as by difficulties attending the administration of the Education Act, the regulation of Chinese labor in South Africa, and a number of other urgent tasks, and the by-elections resulted so uniformly in Unionist defeats as to presage clearly the eventual return of the Liberals to power.

**164. The Liberals in Office: the Elections of 1906.**—Hesitating long, but at the last bowing somewhat abruptly before the gathering storm, Mr. Balfour tendered his resignation December 4, 1905. The Government had in the Commons a working majority of seventy-six, and the Parliament elected in 1900 had still another year of life. In the Lords the Unionists outnumbered their opponents ten to one. The administration, however, had fallen off enormously in popularity, and the obstacles imposed by the fiscal cleavage appeared insuperable. Unable wholly to follow Mr. Chamberlain in his projects, the premier had grown weary of the attempt to balance himself on the tight rope of ambiguity between the free trade and protectionist wings of his party. Not caring, however, to give his opponents the advantage which would accrue from an immediate dissolution of Parliament and the ordering of an election which should turn on clear issues raised by the record of the ten years of Unionist rule, he chose simply to resign and so to compel the forma-

[1] The literature of the Tariff Reform movement in Great Britain is voluminous. The nature of the protectionist proposals may be studied at first hand in J. Chamberlain, Imperial Union and Tariff Reform; speeches delivered from May 15 to November 4, 1903 (London, 1903). Worthy of mention are T. W. Mitchell, The Development of Mr. Chamberlain's Fiscal Policy, in *Annals of American Academy of Political and Social Science*, XXIII., No. 1 (Jan., 1904); R. Lethbridge, The Evolution of Tariff Reform in the Tory Party, in *Nineteenth Century*, June, 1908; and L. L. Price, An Economic View of Mr. Chamberlain's Proposals, in *Economic Review*, April, 1904. A useful work is S. H. Jeyes, Life of Joseph Chamberlain, 2 vols. (London, 1903).

tion of a new government which itself should be immediately on trial when the inevitable elections should come.

On the day of Mr. Balfour's resignation the king designated as premier the Liberal leader, Sir Henry Campbell-Bannerman, who forthwith made up a cabinet of rather exceptional strength in which the premier himself occupied the post of First Lord of the Treasury, Sir Edward Grey that of Foreign Affairs, Mr. Herbert H. Asquith that of the Exchequer, Mr. Richard B. Haldane that of War, Lord Tweedmouth that of the Navy, Mr. David Lloyd-George that of President of the Board of Trade, Mr. John Burns that of President of the Local Government Board, Mr. Augustine Birrell that of President of the Board of Education, and Mr. James Bryce that of Chief Secretary for Ireland. January 8, 1906, the "Khaki Parliament" was dissolved, a general election was ordered, and the new parliament was fixed to meet at the earliest legal date, February 13. The campaign that followed was the most animated, except that of 1910, in recent British history. The Unionists, being themselves divided beyond repair on the question of the tariff, pinned their hope to a disruption of the Liberal forces on the issue of Home Rule. The Liberal leaders, however, steadfastly refused to allow the Irish question to be brought into the foreground. Recognizing that Home Rule in the immediate future was an impossibility, but pledging themselves to a policy contemplating its establishment by degrees, they contrived to force the battle principally upon the issue of free trade *versus* protection and, in general, to direct their most telling attack upon the fiscal record and fiscal policies of their opponents. The result was an overwhelming Liberal triumph. In a total of 6,555,301 votes,[1] 4,026,704 were cast for Liberal, Nationalist, and Labor candidates, and only 2,528,597 for Conservatives and Unionists. There were returned to the House of Commons 374 Liberals, 84 Nationalists, 54 Laborites, 131 Conservatives, and 27 Liberal Unionists, assuring the Liberals and their allies a clear preponderance of 354.[2] Prior to the elections careful observers believed the return of the Liberals to power inevitable, but a victory of such proportions was not dreamed of by the most ardent of the party's well-wishers.[3]

[1] The number of electors in the United Kingdom in 1906 was 7,266,708.

[2] Of the Opposition 102 were Tariff Reformers of the Chamberlain school, while but 16 were thoroughgoing "Free Fooders."

[3] M. Caudel, Les élections générales anglaises (janvier 1906), in *Annales des Sciences Politiques*, March, 1906; E. de Noirmont, Les élections anglaises de janvier 1906; les résultats généraux in *Questions Diplomatiques et Coloniales*, March 1, 1906; E. Porritt, Party Conditions in England, in *Political Science Quarterly*, June, 1906.

## VI. The Rule of the Liberals, 1906–1912

**165. The Liberal Mandate.**—The Liberal ascendancy, made thus secure by the elections of 1906, has continued uninterruptedly to the date of writing (1912), and the years covered by it have been in many respects the most important in the political history of modern Britain. The significance of the period arises principally from the vast amount of social and economic legislation that has been attempted within it. A considerable portion of this legislation has been successfully carried through and is now in effect. Some important portions, however, have failed of eventual adoption, chiefly in consequence of the opposition of the Unionist majority in the Lords; and a direct outcome of the series of clashes between the Liberals and the Lords has been the important constitutional readjustments comprised within the Parliament Act of 1911 already described. Speaking broadly, the Liberals were restored to power in 1906 because the nation desired the doing of certain things which the Unionists seemed unable or disinclined to do. Most important among these things were: (1) the reduction of public expenditures and the curbing of national extravagance; (2) the remission of taxation imposed during the South African war; (3) the reform of the army; and (4) the undertaking of an extended programme of social reform, embracing the establishment of old age pensions, the remedying of unemployment, the regulation of the liquor traffic, and the liberation of education from ecclesiastical domination. The nation was solicitous, too, that the system of free trade be maintained without impairment. To all of these policies, and more, the Liberals were committed without reserve when they entered office.

**166. The Party's Performance.**—During the years intervening between the elections of 1906 and those of 1910 the Liberal governments presided over successively by Mr. Campbell-Bannerman and Mr. Asquith[1] made honest effort to redeem the election pledges of the party. They stopped the alarming increase of the national debt and made provision for debt reduction at a rate equalled at but two brief periods since the middle of the nineteenth century. They repealed approximately half of the war taxes which were still operative when they assumed office. In the matter of national expenditures they accomplished a momentary

[1] Mr. Campbell-Bannerman resigned April 5, 1908. His successor was Mr. Asquith, late Chancellor of the Exchequer. Most of the ministers were continued in their respective offices, but Mr. Lloyd-George became Chancellor of the Exchequer, Mr. Winston Churchill President of the Board of Trade, Lord Tweedmouth President of the Council, and the Earl of Crewe Secretary of State for the Colonies.

reduction, although the normal increase of civil outlays, the adoption of old age pensions, and, above all, the demand of the propertied interests for the maintenance of a two-power naval standard brought about eventually an increase rather than a diminution of the sums carried by the annual budget. In accordance with a scheme worked out by Mr. Haldane they remodelled the army. They maintained free trade. They made no headway toward Home Rule, but they enacted, in 1909, an Irish Universities bill and an Irish Land Purchase bill which were regarded as highly favorable to Irish interests. Above all, they labored to meet the demand of the nation for social legislation. The prevalence of unemployment, the misery occasioned by widespread poverty, the recurrence of strikes and other industrial disorders, the growing volume of emigration, and other related aspects of England's present social unsettlement, have served to fix unshakably in the public mind the idea that the state must plan, undertake, and bear the cost of huge projects of social and industrial amelioration and of democratization and reform. In the realization of those portions of their programme which relate to these matters the Liberals have been only partially successful. They enacted important labor legislation, including an eight-hour working day in mines, a Labor Exchanges act, and a Trades Disputes act, and they established, by act of 1908, an elaborate system of old age pensions. By reason of the opposition of the House of Lords, however, they failed to enact the bill of 1906 for the abolition of plural voting, the hotly contested measure of 1906 providing for the undenominationalizing of the schools, the Aliens Bill of 1906, the Land Values Bill of 1907, the Licensing Bill of 1908, the London Elections Bill of 1909, and, finally, the Finance Bill of 1909, whose rejection by the Lords precipitated a dissolution of Parliament and the ordering of the elections of January, 1910.

**167. The Liberals Versus the Lords: the Elections of January, 1910.** —Four years of conflict with the overpowering Opposition in the upper chamber brought the Liberals to a place from which they neither could nor would go on until certain fundamentals were settled. The first was the assurance of revenues adequate to meet the growing demands upon the treasury. The second was the alteration of the status of the Lords to make certain the predominance of the popular branch of Parliament in finance and legislation. During the two years (1909–1911) while these great issues were pending the nation was stirred to the depths and party conflict was unprecedented in intensity. On the side of finance, Unionists and Liberals were in substantial agreement upon the policies—especially old age pensions and naval aggrandizement—which rendered larger outlays inevitable; they differed, rather,

upon the means by which the necessary funds should be obtained. The solution offered in the Lloyd-George budget of 1909 was the imposition of new taxes on land and the increase of liquor license duties and of the taxes on incomes and inheritances. The new burdens were contrived to fall almost wholly upon the propertied, especially the landholding, classes. To this plan the Unionists offered the alternative of Tariff Reform, urging that the needed revenues should be derived from duties laid principally upon imported foodstuffs, although the free trade members of the party could not with consistency lend this proposal their support. The rejection of the Finance Bill by the Lords, November 30, 1909, sweeping aside as it did three centuries of unbroken precedent, brought to a crisis the question of the mending or ending of the Lords, and although the electoral contest of January, 1910, was fought immediately upon the issue of the Government's finance proposals, the question of the Lords could by no means be kept in the background. The results of this election were disappointing to all parties save the Nationalists. The final returns gave the Liberals 274 seats, the Unionists 273, the Nationalists 82, and the Laborites 41. The Asquith government found itself still in power, but absolutely dependent upon the co-operation of the Labor and Nationalist groups. Upon the great issues involved there was no very clear pronouncement, but it was a foregone conclusion that the tax proposals would be enacted, that some reconstitution of the House of Lords would be undertaken, and that free trade would not yet be in any measure abandoned.[1]

**168. The Liberal Triumph: the Elections of December, 1910.**—The developments of the ensuing year and a half have been sketched elsewhere.[2] They comprised, in the main: (1) the re-introduction and the enactment of the Finance Bill of 1909: (2) the bringing forward by

[1] R. G. Lévy, Le budget radical anglais, in *Revue Politique et Parlementaire*, Oct. 10, 1909; G. L. Fox, The Lloyd-George Budget, in *Yale Review* (Feb., 1910); E. Porritt, The Struggle over the Lloyd-George Budget, in *Quarterly Journal of Economics*, Feb., 1910; P. Hamelle, Les élections anglaises, in *Annales des Sciences Politiques*, May 15, 1910; S. Brooks, The British Elections, in *North American Review*, March, 1910; W. T. Stead, The General Elections in Great Britain, in *Review of Reviews*, Feb., 1910. A useful survey is Britannicus, Four Years of British Liberalism, in *North American Review*, Feb., 1910, and a more detailed one is C. T. King, The Asquith Parliament, 1906–1909; a Popular History of its Men and Measures (London, 1910). A valuable article is E. Porritt, British Legislation in 1906, in *Yale Review*, Feb., 1907. A French work of some value is P. Millet, La crise anglais (Paris, 1910). A useful collection of speeches on the public issues of the period 1906–1909 is W. S. Churchill, Liberalism and the Social Problem (London, 1909).

[2] See pp. 108–111.

Mr. Asquith of the Government's proposals relative to the alteration of relations between the two houses of Parliament; (3) the adoption by the House of Lords of the principle of Lord Rosebery's projected scheme of upper chamber reform; (4) the interruption and postponement of the contest by reason of the death of Edward VII.; (5) the failure of the Constitutional Conference in the summer of 1910; (6) the adoption by the second chamber of the reform resolutions of Lord Lansdowne; (7) the dissolution of Parliament, after an existence of but ten months, to afford an opportunity for a fresh appeal to the country on the specific issue of second chamber reform; (8) the elections of December, 1910, and the assembling of the new parliament in January, 1911; and (9) the re-introduction and the final enactment, in the summer of 1911, of the Government's momentous Parliament Bill. At the December elections the contending forces were so solidly entrenched that the party quotas in the House of Commons remained all but unchanged. Following the elections they stood as follows: Liberals, 272; Unionists, 272; Nationalists, 76; Independent Nationalists (followers of William O'Brien), 8; and Laborites, 42. The Unionists gained substantially in Lancashire, Devonshire, and Cornwall, but lost ground in London and in several boroughs throughout the country. Still dependent upon the good-will of the minor parties, the Government addressed itself afresh to the limitation of the veto power of the Lords and to the programme of social amelioration which during the recent months of excitement had been accorded meager attention. Effort in the one direction bore fruit in the Parliament Act, approved by the crown August 18, 1911; while upon the other side substantial results were achieved in the enactment, December 16, 1911, of a far-reaching measure instituting a national system of insurance against both sickness and unemployment.[1]

[1] On the elections of December, 1910, see P. Hamelle, La crise anglaise: les élections de décembre 1910, in *Revue des Sciences Politiques*, July–Aug., 1911; E. T. Cook, The Election—Before and After, in *Contemporary Review*, Jan., 1911; Britannicus, The British Elections, in *North American Review*, Jan., 1911; and A. Kann, Les élections anglaises, in *Questions Diplomatiques et Coloniales*, Jan. 16, 1911. The best account of the adoption of the Parliament Bill is A. L. P. Dennis, The Parliament Act of 1911, in *American Political Science Review*, May and Aug., 1912. For other references see p. 115. On the National Insurance Act see E. Porritt, The British National Insurance Act, in *Political Science Quarterly*, June, 1912; A. Gigot, La nouvelle loi anglaise sur l'assurance nationale, in *Le Correspondant*, May 10, 1912; O. Clark, The National Insurance Act of 1911 (London, 1912); and A. S. C. Carr, W. H. Stuart, and J. H. Taylor, National Insurance (London, 1912). The text of the Insurance Act is printed in *Bulletin of the United States Bureau of Labor*, No. 102 (Washington, 1912).

## VII. The Parties of To-day

**169. Significance of "Liberal" and "Conservative."**—Of the four political parties of Great Britain to-day one, the Irish Nationalist, is localized in Ireland and has for its essential purpose the attainment of the single end of Irish Home Rule;[1] another, the Labor party, is composed all but exclusively of workingmen, mainly members of trade-unions, and exists to promote the interests of the laboring masses; while the two older and more powerful ones, the Liberal and the Conservative or Unionist, are broadly national in their constituencies and well-nigh universal in the range of their principles and policies. It is essential to observe, however, that while the programme of the Nationalists is, at least to a certain point, perfectly precise, and that of the Laborites is hardly less so, there is no longer, despite the heat of recurring electoral and parliamentary combats, much that is fundamental or permanent in the demarcation which sets off the two major parties the one against the other. Even the names "Liberal" and "Conservative" denote in reality much less than might be supposed. During the generation which began with the Reform Act of 1832 the Liberals, indeed, extended the franchise to the middle classes, reformed the poor law, overhauled the criminal law, introduced a new and more satisfactory scheme of municipal administration, instituted public provision for elementary education, enacted statutes to safeguard the public health, removed the disabilities of dissenters, and assisted in the overthrow of the protective system. But if the Conservatives of the period 1830–1870 played, in general, the rôle implied by their party designation, their attitude none the less was by no means always that of obstructionists, and in the days of the Disraelian leadership they became scarcely less a party of reform than were their opponents. Beginning with the Reform Act of 1867, a long list of progressive and even revolutionizing measures must be credited to them, and in late years they and the Liberals have vied in advocating old age pensions, factory legislation, accident insurance, housing laws, and other sorts of advanced and remedial governmental action. The differences which separate the two parties are not so much those of

[1] A recent and important work on party history is F. H. O'Donnell, A History of the Irish Parliamentary Party, 2 vols. (London, 1910). See Earl of Crewe, Ireland and the Liberal Party, in *New Liberal Review*, June, 1901; E. Porritt, Ireland's Representation in Parliament, in *North American Review*, Aug., 1905; J. E. Barker, The Parliamentary Position of the Irish Party, in *Nineteenth Century*, Feb., 1910; and P. Sheehan, William O'Brien and the Irish Centre Party, in *Fortnightly Review*, Dec., 1910.

principle or of political dogma as those of policy respecting immediate and particular measures, and especially those of attitude toward certain important organizations and interests. The Liberals assert themselves to be more trustful of the people and more concerned about the popular welfare, but the Conservatives enter a denial which possesses plausibility. It is probably true that the Liberals have fostered peace and economy with more resoluteness than have their rivals, yet so far as expenditures go the Liberal administration to-day is laying out more money than was ever laid out by a Conservative government in time of peace. The Liberals are seemingly more regardful of the interests of Scotland, Wales, and Ireland, but the difference is not so large as is sometimes supposed.

**170. Present-day Issues.**—Aside from the tariff question (and the Conservatives are far from united upon the Chamberlain programme), the principal issues which separate the two leading parties to-day are those which arise from the Conservative attitude of friendliness toward the House of Lords, the Established Church, the landowners, and the publicans. Most of the political contests of recent years have been waged upon questions pertaining to the constitution of the upper chamber, denominational control of education, disestablishment, the taxation of land, and the regulation of the liquor traffic, and in all of these matters the Liberals have been insisting upon changes which their opponents either disapprove entirely or desire to confine within narrower bounds than those proposed. In the carrying through of the Parliament Bill of 1911, providing a means by which measures may be enacted into law over the protest of the Conservative majority in the Lords, the Liberals achieved their greatest triumph since 1832. The party stands committed to-day to a large number of far-reaching projects, including the extension of social insurance, the revision of the electoral system, the establishment of Home Rule, and, ultimately, a reconstitution of the second chamber as promised in the preamble of the Parliament Act. At the date of writing (October, 1912) there are pending in Parliament a momentous measure for the granting of Home Rule to Ireland [1] and another for the overhauling of the electoral system,[2] an important bill for the disestablishment of the Church in Wales, a measure virtually annulling the principle involved in the Osborne Decision,[3] and several minor Government proposals. The recent victories of the Liberals have been won with the aid of Labor

[1] W. J. Laprade, The Present Status of the Home Rule Question, in *American Political Science Review*, Nov., 1912.

[2] See p. 90.

[3] See p. 127.

and Irish Nationalist votes, and the concessions which have been, and are being, made to the interests of these auxiliary parties may be expected to affect profoundly the course of legislation during the continuance of the Liberal ascendancy.[1] There are, it may be said, indications that the Liberals possess less strength throughout the country than they exhibited during the critical years 1910–1911. At thirty-eight by-elections contested by the Unionists since December, 1910, the Liberals have suffered a net loss of eight seats; and one of the contests lost was that in Midlothian, long the constituency represented by Gladstone, which returned, in September, 1912, a Conservative member for the first time in thirty-eight years. There is a tradition that when a Liberal government is defeated in Midlothian the end of that government is not far distant. Prophecy in such matters, however, is futile. Meanwhile the Unionists continue to be divided upon the tariff, but in the main they are united in opposition to the overturning of the ancient constitutional system, although they no longer generally oppose a moderate reform of the House of Lords. In a speech delivered at Leeds, November 16, 1911, the new parliamentary leader of the party, Mr. Bonar Law,[2] enumerated as the immediate Unionist purposes (1) to oppose the Government's Welsh Disestablishment scheme, (2) to resist Home Rule, (3) to labor for tariff reform as the only practicable means of solving the problem of unemployment, and (4) to defend at all costs the unity of the Empire.

**171. Party Composition.**—Both of the great parties as constituted to-day possess substantial strength in all portions of the kingdom save Ireland, the Liberals being in the preponderance in Scotland, Wales, and northern England, and the Conservatives in the south and southwest. Within the Conservative ranks are found much the greater portion of the people of title, wealth, and social position; nearly all of the clergy of the Established Church, and some of the Dissenters; a majority of the graduates of the universities[3] and of members of the bar; most of the prosperous merchants, manufacturers, and financiers; a majority of clerks and approximately half of the tradesmen and shopkeepers; and a very considerable mass, though not in these days half, of the workingmen. During the second half of the nine-

[1] H. Seton-Karr, The Radical Party and Social Reform, in *Nineteenth Century*, Dec., 1910.

[2] Mr. Law was chosen Opposition leader in the Commons November 13, 1911, upon the unexpected retirement of Mr. Balfour from that position.

[3] At the election of 1906, 21,505 of the 25,771 votes recorded in the university constituencies were cast for Unionist candidates. Since 1885 not a Liberal member has been returned from any one of the universities.

teenth century the well-to-do and aristocratic Whig element in the Liberal party was drawn over, in the main, to the ranks of the Conservatives,[1] and to this day the Liberal party contains but a small proportion of the rank and wealth of the kingdom. It is pre-eminently an organization of the middle and popular classes.

**172. The Independent Labor Party.**—The Labor party of the present day is the product largely of the twin agencies of socialism and trade-unionism. As early as 1868 two persons sought seats in Parliament as representatives of labor, and at the elections of 1874 there were no fewer than thirteen labor candidates, two of whom were successful. Great industrial upheavals of succeeding years, notably the strike of the London dock laborers in 1889, together with the rise of new organizations composed of unskilled labor and pronouncedly infected with socialism, created demand for the interference of the state for the improvement of labor conditions and led eventually to the organization of the Independent Labor Party in 1893. The aim of this party as set forth in its constitution and rules is essentially socialistic, namely, "the establishment of collective ownership and control of the means of production, distribution, and exchange"; and the working programme as originally announced includes (1) a universal eight-hour day, (2) the abolition of over-time, piece-work, and the employment of children under fourteen, (3) state provision for the ill, the invalid, and the aged, (4) free, non-sectarian education of all grades, (5) the extinction by taxation of unearned incomes, and (6) universal disarmament. To this programme has been added woman's suffrage, a second ballot in parliamentary elections, municipal control of the liquor traffic and of hospitals, and a number of other proposed innovations. At the elections of 1895 the party named twenty-eight candidates, but no one of them was successful and Keir Hardie, founder and president, lost the seat which he had occupied since 1892. In 1900 it attained, in the re-election of Hardie, its first parliamentary victory, and in 1906 when the tide of radicalism was running high seven of its candidates and sixteen of its members were elected to the House of Commons.

**173. The Labor Party To-day.**—The Independent Labor Party has been throughout its history avowedly socialistic. It has sought and obtained the adherence of thousands of laboring men, some of whom are, and some of whom are not, socialists. But its character is too radical to attract the mass of trade-union members and alongside it there has grown up a larger and broader organization known simply as the Labor Party. A trade-union congress held at London in

[1] The defection was largest at the time of the Liberal Unionist secession in 1886.

September, 1899, caused to be brought together an assemblage of representatives of all co-operative, trade-union, socialist, and working-class organizations which were willing to share in an effort to increase the representation of labor in Parliament. This body held its first meeting at London in February, 1900, and an organization was formed in which the ruling forces were the politically inclined but non-socialistic trade-unions. The object of the affiliation was asserted to be "to establish a distinct labor group in Parliament, who shall have their own whips, and agree upon their own policy, which must embrace a readiness to co-operate with any party which for the time being may be engaged in promoting legislation in the direct interest of labor." The growth of the organization was rapid, and in 1906 the name which had been employed, i. e., Labor Representation Committee, gave place to that of Labor Party. At the elections of 1906 twenty-nine of the fifty-one candidates of this party were chosen to the House of Commons. Taking into account eleven members connected with miners' organizations and fourteen others who were Independent Laborites or Liberal Laborites ("Lib.-Labs."), the parliament chosen in 1906 contained a labor contingent aggregating fifty-four members. Since 1908 there has been in progress a consolidation of the labor forces represented at Westminster and, although at the elections of 1910 some seats were lost, there are in the House of Commons to-day forty-two labor representatives. The entire group is independent of, but friendly toward, the Liberal Government; and since the Liberals stand in constant need of Labor support, its power in legislation is altogether disproportioned to its numbers.[1]

[1] Two satisfactory volumes on the political activities of labor in the United Kingdom are C. Noel, The Labour Party, What it is, and What it wants (London, 1906) and A. W. Humphrey, A History of Labor Representation (London, 1912). See E. Porritt, The British Socialist Labor Party, in *Political Science Quarterly*, Sept., 1908, and The British Labor Party in 1910, ibid., June. 1910; M. Alfassa, Le parti ouvrier au parlement anglais, in *Annales des Sciences Politiques*, Jan. 15, 1908; H. W. Horwill, The Payment of Labor Representatives in Parliament, in *Political Science Quarterly*, June, 1910; J. K. Hardie, The Labor Movement, in *Nineteenth Century*, Dec., 1906; and M. Hewlett, The Labor Party of the Future, in *Fortnightly Review*, Feb., 1910. Two books of value on English socialism are J. E. Barker, British Socialism; an Examination of its Doctrines, Policy, Aims, and Practical Proposals (London, 1908) and H. O. Arnold-Foster, English Socialism of To-day (London, 1908).

# CHAPTER VIII

## JUSTICE AND LOCAL GOVERNMENT

### I. English Law

The preponderating principle in the governmental system of Great Britain to-day is the rule of law, which means, in effect, two things: first, that no man may be deprived of liberty or property save on account of a breach of the law proved in one of the ordinary courts and, second, that no man stands above the law and that for every violation of the law some reparation may be obtained, whatever the station or character of the offender.[1] Upon these fundamental guarantees has been erected through the centuries a fabric of personal liberty which lends the British nation one of its principal distinctions. The influence of English concepts and forms of law has counted for much, furthermore, in the shaping of continental legal systems; and outside of Europe, and especially in the English-speaking countries of both hemispheres, the law of England has been, within modern times, much the most universal and decisive formative agency in legal development.

**174. Statute Law and Common Law.**—From at least the seventeenth century law has been conceived of in England as exclusively the body of rules, of whatsoever origin or nature, which can be enforced in the regular courts. As it has taken form, it falls into two principal categories. The one is statute law, the other is the Common Law. Statute law consists of specific acts of Parliament, supplemented by by-laws, rules, and regulations made under parliamentary sanction by public officials and bodies. Chronologically, it begins in 1235, in the reign of Henry III.; and inasmuch as it is amended and amplified at substantially every parliamentary session, the bulk of it has come to be enormous. The more comprehensive and fundamental part of English law, however, is, and has always been, the Common Law. The Common Law is a product of growth rather than of legislation. No definite time can be assigned for its beginning, for at as early a

[1] The only exception to this general proposition is afforded by the fact that the sovereign may not be sued or prosecuted in the ordinary courts; but this immunity, as matters now stand, is of no practical consequence.

period as there are reports of judicial decisions the existence of a body of law not emanating from law-makers was taken for granted. Long before the close of the Middle Ages the essentials of the Common Law had acquired not only unquestioned sanction but also thoroughgoing coherence and uniformity. Despite the greatly increased legislative activity of modern times, it still may be said that the rules of the Common Law are fundamental, the laws of Parliament but incidental. Statutes regularly assume the principles of the Common Law, and are largely, as one writer has put it, "the addenda and errata" of this law, incomplete and meaningless save in co-ordination with the legal order by which they are supported and enveloped.[1] Thus no act of Parliament enjoins in general terms that a man shall pay his debts, or fulfill his contracts, or pay damages for trespass or slander. Statutes define the *modes* in accordance with which these obligations shall be met, but the obligations themselves are derived entirely from the Common Law. It is, however, a fixed rule that where statutes fall in conflict with the Common Law it is the statutes that prevail. The limitless competence of Parliament involves the power to set aside or to modify at any time any Common Law principle or practice, while, on the other hand, no development of the Common Law can repeal an act of Parliament.

**175. The Form of the Law.**—Statute law takes invariably, of course, written form. The acts of Parliament are to be found in imposing printed collections, to which a substantial volume is added every year. Of the Common Law, however, there is no single or authoritative text. The Common Law grew up originally as unwritten law, and in a large measure it preserves still that character. The sources, however, from which knowledge of it must be drawn are mainly in writing or in print. The most important are (1) the decisions of the judges of the English courts (reported anonymously in Year Books from the reign of Edward I. to that of Henry VIII., and thereafter by lawyers reporting under their own names) which from at least the sixteenth century acquired weight as precedents and are nowadays all but absolutely decisive in analogous cases; (2) the decisions of courts of other countries in which there is administered a law derived from the English, such decisions being, of course, not binding, yet highly influential; and (3) certain "books of authority" written

[1] W. M. Geldart, Elements of English Law (London and New York, 1912), 9. As this author further remarks, "if all the statutes of the realm were repealed, we should have a system of law, though, it may be, an unworkable one; if we could imagine the Common Law swept away and the Statute Law preserved, we should have only disjointed rules torn from their context, and no provision at all for many of the most important relations of life."

by learned lawyers of earlier times, such as Coke's seventeenth-century Commentary on Littleton's Tenures and Foster's eighteenth-century treatise on Crown Law. Some small branches of the Common Law have, indeed, been codified in the form of statutes, among them the law of partnership, that of sales, and that of bills of exchange.

**176. The Rules of Equity.**—There is one other body of English law which requires mention, namely, the rules of equity. These rules had their origin in the administration of an extraordinary sort of justice by the king's chancellor in mediæval times, a practice which arose from the sheer necessity of redressing grievances occasioned by the omissions or commissions of the regularly constituted tribunals. Interference on the part of the chancellor, which started as a matter of special favor in unusual cases, became gradually an established practice, and, contrary to the original intention, there was brought into existence a body of definite and separate rules of equity which by the seventeenth century acquired systematic character, and likewise a court of chancery in which these rules were at all times enforceable. Reports of equity cases became continuous, and lawyers of eminence began to specialize in equity procedure. The rules of equity thus developed partake largely of the nature of the Common Law, of which, indeed, they are to be considered, in effect, a supplement or appendix; and practically, though not theoretically, they prevail as against any provisions of the ordinary Common Law with which they may be inconsistent. Their general purpose is to afford means of safeguarding rights which exist in morals, but which the Common Law courts cannot or will not protect. Until 1875 they were administered by tribunals separate from the ordinary courts. Nowadays they are not separately administered, but they preserve, none the less, their highly distinctive character.[1]

[1] Two monumental works dealing with the earlier portions of English legal development are F. Pollock and F. W. Maitland, History of English Law to the Time of Edward I., 2 vols. (Cambridge, 1898) and W. S. Holdsworth, History of English Law, 3 vols. (London, 1903–1909). The first volume of Holdsworth contains a history of English courts from the Norman Conquest to the present day; the other volumes deal exhaustively with the growth of the law itself. Books of value include H. Brunner, The Sources of the Law of England, trans. by W. Hastie (Edinburgh, 1888); R. K. Wilson, History of Modern English Law (London, 1875). J. F. Stephen, History of the Criminal Law of England, 3 vols. (London, 1883); ibid., Commentaries on the Laws of England, 4 vols. (London, 1908); O. W. Holmes, The Common Law (Boston, 1881); and H. Broom and E. A. Hadley, Commentaries on the Laws of England, 4 vols. (London, 1869). A recent treatise by a German authority is J. Hatschek, Englisches Staatsrecht mit Berücksichtigung der für Schottland und Irland geltenden Sonderheiten (Tübingen, 1905). An incisive work is A. V. Dicey, Law and Public Opinion in England in

## II. The Inferior Courts

**177. The Hierarchy of Tribunals.**—In the majority of continental countries a distinction is drawn between ordinary law and what is known as administrative law, i. e., the body of rules governing the conduct of public officials and, more particularly, the adjudication of disputes between these officials, in their public capacity, and private citizens. This differentiation of law entails customarily the maintenance of administrative courts, separate from the ordinary tribunals, in which administrative cases are heard and decided. In Great Britain, however, there is no such thing as administrative law, and in consequence there is no need of administrative courts. Public officials, from the ministers downwards, are amenable to the processes of the ordinary tribunals precisely as are all other classes of people. Simpler, therefore, at this point than the continental systems of courts, the English system is none the less one of the most elaborate and complicated in the world. There are features of it which in origin are mediæval, others which owe their existence to the reforming enterprises of the earlier nineteenth century, and still others which have a history covering hardly more than a generation. Reduced to its simplest aspect, the system comprises, at the bottom, three principal varieties of tribunals—the county courts for civil cases and the courts of the justices of the peace and the borough criminal courts for criminal cases—and, at the top, a Supreme Court of Judicature in two branches, i. e., the High Court of Justice and the Court of Appeal, in addition to the Judicial Committee of the Privy Council, the House of Lords, and a number of other occasional or special central tribunals.[1]

the Nineteenth Century (London, 1905). A good single volume history of the law is E. Jenks, Short History of the English Law (Boston, 1912). A satisfactory introduction to both the history and the character of the law is W. M. Geldart, Elements of English Law (London and New York, 1912). Another is F. W. Maitland, Outlines of English Legal History, in Collected Papers (Cambridge, 1911), II., 417–496. Other excellent introductory treatises are Maitland, Lectures on Equity (Cambridge, 1909), and C. S. Kenny, Outlines of Criminal Law (New York, 1907). Maitland's article on English Law in the Encyclopædia Britannica, IX., 600–607, is valuable for its brevity and its clearness. On the English conception of law and the effects thereof see Lowell, Government of England, II., Chaps. 61–62. The character and forms of the statute law are sketched to advantage in C. P. Ilbert, Legislative Methods and Forms (Oxford, 1901), 1–76.

[1] It should be noted that the judicial system herein to be described is that of England alone. The systems existing in Scotland and Ireland are at many points unlike it. In Scotland the distinction between law and equity is virtually unknown and the Common Law of England does not prevail. In Ireland, on the other hand, the Common Law is operative and judicial organization and procedure are roughly similar to the English.

**178. The County Courts.**—The county courts of the present day were established under provision of the County Court Act of 1846, and it is to be observed that they are in no manner connected with the historic courts of the shire or county. They are known as county courts, but in point of fact the area of their jurisdiction is a district which not only is smaller than the county but bears no relation to it. There are in England at present some five hundred of these districts, the object of the arrangement being to bring the agencies of justice close to the people and so to reduce the costs and delays incident to litigation.[1] The volume of business to be transacted in a district is insufficient to occupy a judge during any considerable portion of his working time, and the districts are grouped in some fifty circuits, to each of which is assigned by the Lord Chancellor one judge who holds court in each district of his circuit approximately once a month. The judge sits almost invariably without a jury, although unless the amount involved is very small either party to a suit is privileged to request the employment of a jury of eight persons. The jurisdiction of the county courts has been enlarged a number of times, notably by a statute of 1905, but it is still not as extended as many people believe it should be. In a few matters, such as certain claims of workingmen for injuries, this jurisdiction is exclusive, but at most points it is concurrent with the jurisdiction of the High Court of Justice, and Common Law, equity, bankruptcy, probate, and admiralty cases may be brought, at the discretion of the plaintiff, in either tribunal, subject to the restriction that the county court may not assume jurisdiction when the value in dispute exceeds a certain amount, commonly £100 in Common Law cases and £500 in cases of equity. On all points of law appeal lies to the High Court; but appeals are rare.[2]

**179. The Justices of the Peace.**—The county courts exist for the adjudication of civil cases exclusively. The corresponding local tribunals for the administration of criminal justice are the courts of the justices of the peace, and, in certain towns, other courts to which the powers of the justices have been transferred. The county is normally the area of the jurisdiction of the justices, and with a few exceptions every county has a separate "commission of the peace,"[3] consisting of all the judges of the Supreme Court of Judicature, all members of the Privy Council, and such

[1] Prior to 1846 justice in civil cases could be obtained only at Westminster, or, in any event, by means of an action instituted at Westminster and tried on circuit.

[2] A few inferior civil courts of special character have survived from earlier days, but they are anomalous and do not call for comment. It may be added that the judges of the county courts receive a salary of £1,500.

[3] The three ridings of Yorkshire and the three divisions of Lincolnshire have separate commissions, and there are a few "liberties" or excepted jurisdictions.

other persons as the crown, acting through the Lord Chancellor, may designate as justices on recommendation of the Lord Lieutenant or independently.[1] The Lord Lieutenant is chief of the justices and keeper of the county records. In many counties the list of justices contains three or four hundred names (in Lancashire eight hundred), but it is to be observed that some of the appointees do not take the oaths required to qualify them for magisterial service and that the actual work is performed in each county by a comparatively small number of persons. The justices serve without pay, but the office carries much local distinction and appointments are widely coveted. Until 1906 a property qualification[2] was required of all save certain classes of appointees whose station was deemed a sufficient guarantee of fitness, but in the year mentioned the Liberals brought about its abolition. The justices are drawn still, in large part, from the class of country gentlemen. They are removable by the crown, but tenure is almost invariably for life.

**180. Powers of the Justices.**—At one time the functions of the justices of the peace were administrative as well as judicial, but by the Local Government Act of 1888 functions of an administrative nature were transferred all but completely to the newly created county councils,[3] and the justices to-day are judicial officials almost exclusively. Their judicial labors may be performed under three conditions, namely, by justices acting singly, by two or more justices meeting in petty sessions, and by the whole body of justices of the county assembled in quarter sessions. The powers of a justice acting alone are those largely of the ordinary police magistrate. He may order the arrest of offenders; he conducts preliminary examinations and releases the accused or commits them for indictment by a grand jury; and he hears cases involving unimportant breaches of the law and imposes small penalties. The justices sitting by twos in petty sessions exercise an extensive summary jurisdiction over offenses specified minutely by the law.[4] They sit without a jury, but appeal can be carried, as a rule, to the justices at quarter sessions and even, on questions of law, to the High Court. Four times a year all of the justices of the county, or such of them as care to be present, meet in quarter sessions. The jurisdiction here exercised is in part appellate and in part original. The court tries, without a jury, all cases appealed from

[1] A royal commission created to consider the mode of appointment reported in 1910; but no important modification of the existing practice was suggested.

[2] Ownership of land, or occupation of a house, worth £100 a year.

[3] See p. 183.

[4] Chiefly by the Summary Jurisdiction Act of 1879.

petty sessions, and it tries, with a jury, and after indictment by a grand jury, all cases involving offenses not of a minor nature, save that the most serious offenses, punishable in most instances with death or life imprisonment, are reserved for trial in the assizes, i. e., by judges from Westminster travelling on circuit. By means of the writs of *mandamus* and *certiorari* the actual proceedings of quarter sessions are controlled not infrequently by the superior courts.[1]

**181. Special Borough Arrangements.**—The smaller boroughs, having no separate commissions of the peace, are for purposes of criminal justice merely portions of the counties in which they lie. In many of the larger ones, however, there have been set up judicial arragements in consequence of which the borough is withdrawn from the county jurisdiction. Some have a commission of the peace but no quarter sessions. In them the justices can exercise, in addition to the usual functions of police magistrate, only a summary jurisdiction. Others have a court of quarter sessions; though it is to be observed that where this tribunal exists its work is performed actually by the recorder, a barrister appointed by the crown and paid by the borough.

## III. The Higher Courts

**182. Supreme Court of Judicature: the High Court.**—The higher tribunals within the judicial system were once numerous and extremely complex. As reconstituted, however, by the great Judicature Act of 1873, which, together with an Amending Act, took effect near the close of 1875, they have acquired a considerable degree of orderliness and even of simplicity. The measure of 1873 abolished the appellate jurisdiction of the House of Lords, but the Amending Act three years later rescinded this modification, and, as has been explained elsewhere, the House of Lords is still a court of very great importance.[2] Aside from the Lords, however, the higher courts of the realm—the Chancery, the three great Common Law courts, the Admiralty, Probate, and Divorce courts, and the intermediate courts of appeal from these tribunals of first instance—were consolidated by the legislation of 1873–1875 to form one grand organization, the Supreme Court of Judicature, which was thereupon cut into two branches, the High Court of Justice and the Court of Appeal. The High Court of Justice was assigned a general jurisdiction, civil and criminal, as a court of first

[1] Medley, Manual of English Constitutional History, 392–400. An excellent monograph is C. A. Beard, The Office of Justice of the Peace in England, in *Columbia University Studies in History, Economics, and Public Law*, XX., No. 1. (New York, 1904).

[2] See p. 130.

instance and also as a court of appeal from inferior courts. Its jurisdiction represents essentially the aggregate of jurisdictions of the tribunals which it superseded, and the various divisions into which it falls perpetuate in a measure the names and functions of those tribunals. There were originally five of these divisions. To-day there are three: Chancery, King's Bench (with which the Common Pleas and Exchequer divisions were united by order in council of December 16, 1880), and Probate, Divorce, and Admiralty. Any High Court judge may sit in a tribunal belonging to any one of these divisions. The Lord Chancellor presides over the Chancery division, the Chief Justice over the King's Bench. The number of judges is variable. The Chancery division contains at present six, the King's Bench fifteen, and the Probate, Divorce, and Admiralty division but two. All save the Chancellor (who is a cabinet official, owing his position to selection by the premier) are appointed by the crown upon advice of the Chancellor, and all hold office during good behavior but may be dismissed on addresses of the two houses of Parliament. The judges of the High Court sit both singly and in groups. The ordinary trial of cases is conducted, under a variety of stipulated conditions, by a single judge, either at Westminster or on circuit. The judges who go on circuit are taken as a rule from the King's Bench division, and when both civil and criminal cases are to be adjudicated they travel ordinarily in pairs, one attending to the civil and the other to the criminal business. Judges sit also, without juries, in divisional courts, composed of two or more members, to hear appeals from inferior tribunals, motions for new trials, and applications for writs. The High Court never sits as a single body, nor does even the Chancery or the King's Bench division.

**183. Supreme Court of Judicature: the Court of Appeals.**—The second branch of the Supreme Court of Judicature is the Court of Appeal. This tribunal is composed of the Master of the Rolls and five Lords Justices of Appeal, all appointed by the crown upon the advice of the Lord Chancellor. The presidents of the three divisions of the High Court are also members, but they rarely participate in the work of the court; and since 1891 men who have occupied the office of Chancellor are *ex-officio* members, although they sit only if they choose to comply with a request of the Chancellor that they do so. The court performs its functions regularly in two sections of three members each, although for some matters the presence of but two judges is required. Sittings are held only in London. The jurisdiction of the court is exclusively appellate, and its business consists very largely in the hearing of appeals in civil cases carried from the High Court. Prior to 1907 there was no general right of appeal in criminal cases. By the Criminal Appeal Act of that

year, however, there was established a Court of Criminal Appeal to which any person convicted may appeal on a question of law and, under stipulated conditions, on a question of fact also. This tribunal is composed of the Lord Chief Justice and eight judges of the King's Bench appointed by him with the assent of the Lord Chancellor. It, therefore, has no immediate connection with the Court of Appeal.

**184. The House of Lords and the Judicial Committee.**—Of superior tribunals there are two others of large importance, the House of Lords and the Judicial Committee of the Privy Council. The functions of the House of Lords as a court of last resort have been described elsewhere.[1] By the act of 1876 the appellate jurisdiction of the Lords, withdrawn by the act of 1873, was restored and provision was made for the strengthening of the legal element in the chamber by the creation of life peers to be known as Lords of Appeal in Ordinary. Under existing law appeal lies to the Lords from any order or judgment of the Court of Appeal in England and of all Scottish and Irish courts from which appeals might, prior to 1876, be carried. The Judicial Committee of the Privy Council was constituted in 1833 to assume jurisdiction over a variety of cases formerly heard and decided nominally by the Council as a whole. The composition of the body has been changed a number of times. The members at present comprise the Lords of Appeal in Ordinary, such members of the Privy Council as hold or have held high judicial office, two other Privy Councillors designated at pleasure by the crown, and, as a rule, one or two paid members who have held judicial office in India or the colonies. The membership is thus large, but only four members need be present at the hearing of a case, and it may be pointed out that the working members of the Committee are predominantly the four "law lords" who comprise also the working judicial element in the House of Lords. It is the business of the Judicial Committee to consider and determine any matter that may be referred to it by the crown, but, in the main, to hear final appeals from the ecclesiastical courts, from courts in the Channel Islands and the Isle of Man, from the courts of the colonies and dependencies, and from English courts established by treaty in foreign countries. Its decisions are tendered under the guise of "advice to the crown" and, unlike the decisions of the Lords, they must bear the appearance, at least of unanimity.[2]

[1] See p. 130.

[2] For brief descriptions of the English judicial system see Lowell, Government of England, II., Chaps. 59–60; Anson, Law and Custom of the Constitution, II., Pt. I., Chap. 10; Marriott, English Political Institutions, Chap. 14; and Macy, The English Constitution, Chap. 7. As is stated elsewhere (p. 169), the first volume of Holdsworth's History of English Law contains an excellent history of the English

## IV. Local Government to the Municipal Corporations Act, 1835

**185. Periods in Local Governmental History.**—No description of a governmental system can be adequate which does not take into account the agencies and modes by which the powers of government are brought close to the people, as well as those by which the people in greater or lesser measure regulate locally their own public affairs. More especially is this true in the instance of a government such as the English in which local self-control is a fundamental rather than an incidental fact. The history of local institutions in England covers an enormous stretch of time, as well as a remarkable breadth of public organization and activity, and by no means its least important phases are those which have appeared in most recent times. Speaking broadly, it may be said to fall into four very unequal periods. The first, extending from the settlement of the Saxons to the Norman Conquest, was marked by the establishment of the distinctive English units of administration—shire, hundred, and township—and by the planting of the principle of broadly popular local control. The second, extending from the Conquest to the fourteenth century, was characterized by a general increase of centralization and a corresponding decrease of local autonomy. The third, extending from the fourteenth century to the adoption of the Local Government Act of 1888, was pre-eminently a period of aristocratic control of local affairs, of government by the same squirearchy which prior to 1832, if not 1867, was accustomed to dominate Parliament. The last period, that from 1888 to the present time, has been notable in a special degree for the democratization and systematization of local governing arrangements which has taken place within it

**186. County and Parish before 1832.**—The transformation by which the institutions of local government have been brought to their present status paralleled, and in a large measure sprang from, the revolutionizing of Parliament during the course of the nineteenth century. Two periods of change are especially noteworthy, the one following closely the Reform Act of 1832 and culminating in the adoption of the Municipal Corporations Act of 1835, the other following similarly the Representa-

courts. A useful handbook, though much in need of revision, is F. W. Maitland, Justice and Police (London, 1885). Perhaps the best brief account of the development of the English judicial system is A. T. Carter, History of English Legal Institutions (4th ed., London, 1910). Mention may be made of Maitland, Constitutional History of England, 462–484, and Medley, Manual of English Constitutional History, 318–383. Two valuable works by foreign writers are C. de Franqueville, Le système judiciaire de la Grande-Bretagne (Paris, 1898), and H. B. Gerland, Die englische Gerichtsverfassung; eine systematische Darstellung, 2 vols. (Leipzig, 1910). On the Judicature Acts of 1873–1876 see Holdsworth, I., 402–417.

tion of the People Act of 1884 and attaining fruition in the Local Government Act of 1888 and the District and Parish Councils Act of 1894. At the opening of the century rural administration was carried on principally in the shire or county and the civil or "poor law" parish; urban administration in the corporate towns, or municipal boroughs. The counties were fifty-two in number. Most of them were of Saxon origin, although some were the product of absorptions or delimitations which took place in later centuries. The last to be added were those of Wales. Altered often in respect to their precise functions, the counties retained from first to last a large measure of importance, and at the beginning of the nineteenth century they were still the principal areas of local governing activity. From Saxon times to the fourteenth century the dominating figure in county administration was the sheriff, but in the reign of Edward III. justices of the peace were created into whose hands during the ensuing five hundred years substantially all administrative and judicial affairs of the county were drawn. These dignitaries were appointed by the crown, chiefly from the ranks of the smaller landowners and rural clergy, and as a rule they comprised in practice a petty oligarchy whose conduct of public business was inspired by aristocratic, far more than by democratic, ideals.

The principal division of the county was the civil parish, usually but not always identical with the ecclesiastical parish. The governing bodies of the parish were two—the vestry (either open to all rate-payers or composed of elected representatives), which administered general affairs, and the overseers of the poor who under the Elizabethan statute of 1601 were empowered to find employment for the able-bodied poor, to provide other forms of relief as should be required, and to levy a local rate to meet the costs of their work. Since the passage of Gilbert's Act of 1782 the parishes had been arranged in groups for poor-law purposes, and boards of guardians appointed by the justices of the peace had come to be the real authorities in the administration of poor relief, as well as in most other matters. The abuses arising from poor-law administration were not infrequently appalling.

**187. The Borough before 1832.**—The corporate towns in England and Wales numbered, in 1832, 246. They comprised population centers which, on the basis of charters granted by the crown, had become distinct areas of local government. They did not, however, stand entirely apart from the county and parish organization. On the contrary, except in so far as they were exempted specifically by the terms of their charters, they were subject to the authority of the justices of the peace and of the governing agencies of the parishes within whose jurisdiction they were situated. Their style of government was determined

largely by the provisions of their charters, and since these instruments exhibited a marked degree of variety, uniformity of organization was entirely lacking. As a rule, however, the borough was a close corporation, and the burgesses, or "freemen," in whom were vested peculiar trading and fiscal rights and an absolute monopoly of the powers of government, comprised but a small fraction of the general body of citizens. The governing authority of the borough was the town council, whose members were either elected by the freemen or recruited by co-optation. Government was regularly oligarchical and irresponsible; sometimes it was inefficient and corrupt.

**188. The New Poor Law (1834) and the Municipal Corporations Act (1835).**—The reforms accomplished since 1832 within the domain of parliamentary organization and procedure have been hardly more remarkable than those wrought during the same period within the field of local government. It must suffice to mention but the principal steps by which the local governing system has been brought to its present high degree of democracy and effectiveness. Among the subjects to which the first reformed parliament addressed its attention was the direful condition into which had fallen the relief of the poor, and the initial stage of local government regeneration was marked by the adoption of the Poor Law Amendment Act of 1834, abolishing out-door relief for the able-bodied, providing for the regrouping of parishes in "poor-law unions," and establishing a national Poor Law Commission. The administration of relief within the unions was intrusted all but exclusively to newly created boards of guardians, composed in part of the justices of the peace sitting *ex-officio* and in part of members specially elected by the rate-payers. The arrangements set up by the act proved very successful and they survive almost intact at the present day. The second notable change was that effected by the Municipal Corporations Act of 1835. The enfranchising of large numbers of the townspeople in 1832 led inevitably to demand for the democratization of the aristocratic borough governments, and within three years the demand was met in a statute so sweeping as to justify the assertion that with its enactment the modern history of the English town begins.[1] Sixty-nine of the old corporate towns, by reason of their unimportance, were now deprived of the character of boroughs. The city of London was not touched, but elsewhere all municipal corporations were broadened so as to personify legally the entire population of the borough. The time-honored municipal oligarchy was broken down by the giving of the franchise to all rate-payers, the town councils were made wholly elective, trading monopolies and privileges were swept away, and a variety of

[1] Lowell, Government of England, II., 144.

other reforms were introduced. With the adoption of this important measure, however, the work of reform came for a time to a halt, and the widely assailed system of county government through nominated magistrates in quarter sessions survived until 1888.[1]

## V. Local Government Reform, 1835–1912

**189. Mid-Century Confusion of Areas and Jurisdictions.**—Throughout the earlier and middle portions of the Victorian period legislation respecting local government was abundant, but it was special rather than general. It pertained principally to the care of highways and burial grounds, the laying out and organization of districts for the promotion of sanitation, the establishment of "improvement act" districts, and, notably, the erection and administration of school districts under the Elementary Education Act of 1870. With each successive measure the confusion of jurisdictions and agencies was increased. The prevailing policy was to provide for each fresh need as it arose a special machinery designed to meet that particular need, and arrangements effected were seldom or never uniform throughout the country, nor did they bear any logical relation to arrangements already existing for other purposes. By 1871 the country, as Lowell puts it, was divided into counties, unions, and parishes, and spotted over with boroughs and with highway, burial, sanitary, improvement act, school, and other districts, and of these areas none save the parishes and unions bore any necessary relation to any of the rest.[2] In the effort to adapt the framework of the administrative system to the fast changing conditions of a rapidly growing population Parliament piled act upon act, the result being a sheer jungle of interlacing jurisdictions alike baffling to the student and subversive of orderly and economical administration. It is computed that in 1883 there were in England and Wales no fewer than 27,069 independent local authorities,[3] and that the rate-payer was taxed by eighteen different kinds of rates.

[1] The history of the local institutions of England prior to 1835 is related in detail in two comprehensive works: H. A. Merewether and A. J. Stephens, History of the Boroughs and Municipal Corporations of the United Kingdom, 3 vols. (London, 1835) and S. and B. Webb, English Local Government from the Revolution to the Municipal Corporations Act, 3 vols. (London and New York, 1904–1908). The first of these was written to promote the cause of municipal reform, but is temperate and reliable. The second is especially exhaustive, volume 3 containing probably the best existing treatment of the history of borough government. For a brief sketch see May and Holland, Constitutional History of England, II., Chap. 15.

[2] Government of England, II., 135.

[3] These included the 52 counties, the 239 municipal boroughs, the 70 improvement act districts, the 1,006 urban sanitary districts, the 577 rural sanitary districts,

**190. Local Government Act of 1888 and District and Parish Councils Act of 1894.**—Soon after the passage of the Elementary Education Act of 1870 reform began to be attempted in the direction both of concentration of local governing authority and the readjustment and simplification of local governing areas. In 1871 the Poor Law Board (which succeeded the Poor Law Commission in 1847) was converted into the Local Government Board, with the purpose of concentrating in a single department the supervision of the laws relating to public health, the relief of the poor, and local government; and when, in 1872, the entire country was divided into urban and rural sanitary districts, the work was done deliberately in such a fashion as to involve the least possible addition to the existing complexities of the administrative system.[1] The two measures, however, by which, in the main, order was brought out of confusion were the Local Government Act of 1888 and the District and Parish Councils Act of 1894. The first of these, referred to commonly as the County Councils Act, was the sequel of the Representation of the People Act of 1884 and was definitely intended to invest the newly enfranchised rural population with a larger control of county affairs. The act created sixty-two administrative counties (some coterminous with pre-existing counties, others comprising subdivisions of them) and some three score "county boroughs," comprising towns of more than 50,000 inhabitants.[2] In each county and county borough there was set up a council, at least two-thirds of whose members were elective, and to this council was transferred the administrative functions of the justices of the peace, leaving to those dignitaries of the old régime little authority save of a judicial character. The democratization of rural government accomplished by the Conservative ministry of Lord Salisbury in 1888 was supplemented by the provisions of the District and Parish Councils Act, carried by a Liberal ministry in 1894.[3] This measure provided (1) that every county should be divided into districts, urban and rural,

the 2,051 school board districts, the 424 highway districts, the 853 burial board districts, the 649 poor-law unions, the 14,946 poor-law parishes, the 5,064 highway parishes not included in urban or highway districts, and the 1,300 ecclesiastical parishes. For the situation in 1888 see G. L. Gomme, Lectures on the Principles of Local Government (London, 1897), 12–13.

[1] The arrangements effected at this time were perpetuated in the great Public Health Act of 1875. Lowell, Government of England II., 137.

[2] The number of county boroughs had been increased by 1910 to seventy-four. See p. 188.

[3] It should be observed that the original intent in 1888 was to deal with district as well as county organization. In its final form the bill carried in that year had to do only, however, with the counties.

and every district into parishes, and (2) that in every district and in every rural parish with more than three hundred inhabitants there should be an elected council, while in the smallest parishes there should be a primary assembly of all persons whose names appear on the local government and parliamentary register. To the parish councils and assemblies were transferred all of the civil functions of the vestries, leaving to those bodies the control of ecclesiastical matters only, while to the district councils, whether rural or urban, were committed control of sanitary affairs and highways.

The effect of the acts of 1888 and 1894 was two-fold. In the first place, they put the administrative affairs of the rural portions of the country in the hands almost exclusively of popularly elected bodies. In the second place, their adoption afforded opportunity for the immediate or gradual abolition of all local governing authorities except the county, municipal, district, and parish councils, the boards of guardians, and the school boards, and thus they contributed vastly to that gradual simplification of the local governing system which is one of the most satisfactory developments of recent years. The act of 1894 alone abolished some 8,000 authorities. Since 1894 the consolidation of authorities and the elimination of areas have been carried yet further, the most notable step being the abolition of the school boards by the Education Act of 1902 and the transfer of the functions of these bodies to the councils of the counties, boroughs, and districts. Both the majority and minority reports of the recent Poor Law Commission, submitted in 1909, recommend the abolition of the parish union area; but no action has been taken as yet by Parliament upon this subject.[1]

## VI. Local and Central Government

The system of local government as it operates at the present time is by no means free from anomalies, but it exhibits, none the less, an orderliness and a simplicity which were altogether lacking a generation ago. The variety of areas of administration has been lessened, the number of officials has been reduced and their relations have been simplified, the guiding hand of the central authorities in local affairs has been strengthened. Stated briefly, the situation is as follows: the entire kingdom is divided into counties and county boroughs; the counties are subdivided into districts, rural and urban, and boroughs; these are subdivided further into parishes, which are regrouped in poor-law unions; while the city of London is organized after a fashion

[1] The history of local government changes since 1870 is well sketched in May and Holland, Constitutional History of England, III., Chap. 5.

peculiar to itself. In order to make clear the essentials of the system it will be necessary to allude but briefly to the connection which obtains between the local and central administrative agencies, and to point out the principal features of each of the governmental units named.

**191. The Five Central Departments.**—Throughout most periods of its history English local government has involved a smaller amount of interference and of direction on the part of the central authorities than have the local governments of the various continental nations. Even to-day the general government is not present in county or borough in any such sense as that in which the French government, in the person of the prefect, is present in the department, or the Prussian, through the agency of the "administration," is present in the district. A noteworthy aspect of English administrative reform during the past three-quarters of a century has been, nevertheless, a large increase of centralized control, if not of technical centralization, in relation to poor-relief, education, finance, and the other varied functions of the local governing agencies. There are to-day five ministerial departments which exercise in greater or lesser measure this kind of control. One, the Home Office, has special surveillance of police and of factory inspection. A second, the Board of Education, directs and supervises all educational agencies which are aided by public funds. A third, the Board of Agriculture, supervises the enforcement of laws relating to markets and to diseases of animals. A fourth, the Board of Trade, investigates and approves enterprises relating to the supply of water, gas, and electricity, and to other forms of "municipal trading." Most important of all, the Local Government Board directs in all that pertains to the execution of the poor laws and the activities of the local health authorities, oversees the financial operations of the local bodies, and fulfills a variety of other supervisory functions too extended to be enumerated. The powers of these departments in relation to local affairs are exercised in a number of ways, but chiefly through the promulgation of orders and regulations, the giving or withholding of assent to proposed measures of the local bodies, and the giving of expert advice and guidance. It need hardly be added that the powers and functions of the local authorities are subject at all times to control by parliamentary legislation.[1]

[1] On the relations between the central and local agencies of government see Lowell, Government of England, II., Chap. 46; J. Redlich and F. W. Hirst, Local Government in England, 2 vols. (London, 1903), II., Pt. 6; Traill, Central Government, Chap. 11; and M. R. Maltbie, English Local Government of To-day; a Study of the Relations of Central and Local Government (New York, 1897).

## VII. Local Government To-day: Rural

**192. The Administrative County.**—Since the reform of 1888 there have been in England counties of two distinct kinds. There are, in the first place, the historic counties, fifty-two in number, which survive as areas for parliamentary elections and, in some instances, for the organization of the militia and the administration of justice. Their officials—the lord lieutenant, the sheriff, and the justices of the peace—are appointed by the crown. Much more important, however, are the administrative counties, sixty-two in number,[1] created and regulated by the local government legislation of 1888 and 1894. Six of these administrative counties coincide geographically with ancient counties, while most of the remaining ones represent no wide variation from the historic areas upon which they are based. Yorkshire and Lincolnshire were divided into three of the new counties each, and eight others were divided into two. The administrative counties do not include the seventy-four county boroughs which are located geographically within them, but they do include all non-county boroughs and urban districts, so that they are by no means altogether rural. They are extremely unequal in size and population, the smallest being Rutland with 19,709 inhabitants and the largest Lancashire with 1,827,436.

**193. The County Council.**—The governing authority in each administrative county is the county council, a body composed of (1) councillors elected for a term of three years in single-member electoral divisions under franchise qualifications identical with those prevailing in the boroughs, save that plural voting is not permitted, and (2) aldermen chosen for six years by the popularly elected councillors. The number of aldermen is regularly one-third that of the other councillors, and half of the quota retire triennially. Between the two classes of members there is no distinction of power or function. The council elects a chairman and vice-chairman who hold office one year but are commonly re-elected. Other officers are the clerk, the chief constable, the treasurer, the surveyor, the public analyst, inspectors of various kinds, educational officials, and coroners. The tenure of these is not affected by changes in the composition of the council. Legally, the chairman is only a presiding official, though in practice his influence may be, and not infrequently is, greater than that of any other member. In the election of councillors party feeling seldom displays it-

[1] Including the county of London. See p. 190.

self, and elections are very commonly uncontested.[1] Members are drawn mainly from the landowners, large farmers, and professional men, though representatives of the lower middle and laboring classes occasionally appear. The councils vary greatly in size, but the average membership is approximately seventy-five. The bringing together of so many men at frequent intervals is not easily accomplished and the bodies do not assemble ordinarily more than the four times a year prescribed by law. The mass of business devolving upon them is transacted largely through the agency of committees. Of these, some, as the committees on finance, education, and asylums, are required by law; others are established as occasion arises.

The powers and duties of the council are many and varied. In the main, though not wholly, they represent the former administrative functions of the justices of the peace. In the act of 1888 they are enumerated in sixteen distinct categories, of which the most important are the raising, expending, and borrowing of money; the care of county property, buildings, bridges, lunatic asylums, reformatory and industrial schools; the appointment of inferior administrative officials; the granting of certain licenses other than for the sale of liquor; [2] the care of main highways and the protection of streams from pollution; and the execution of various regulations relating to animals, fish, birds, and insects. By the Education Act of 1902 the council is given large authority within the domain of education. It must see that adequate provision is made for elementary schools, and it may assist in the maintenance of agencies of education of higher grades. The control of police within the county devolves upon a joint committee representing the council and the justices of the peace. Finally, the council may make by-laws for the county, supervise in a measure the minor rural authorities, and perform the work of these authorities when they prove remiss.[3]

**194. The Rural District.**—Within the administrative county are four kinds of local government areas—rural districts, rural parishes, urban districts, and municipal boroughs. Of rural districts there are in England and Wales 672. They are coterminous, as a rule, with rural poor-law unions, or with the rural portions of unions which are both rural and urban; but they may not comprise parts of more than one county. The governing authority of the district

[1] At the elections of 1901 there were contests in but 433 of 3,349 divisions. P. Ashley, Local and Central Government; a Comparative Study of England, France, Prussia, and the United States (London, 1906), 25, note.

[2] Liquor licenses are granted by the justices of the peace.

[3] Lowell, Government of England, II., 274–275.

is a council, composed of persons (women being eligible) chosen in most instances triennially by the rural parishes in accordance with population. Unless an order is made to the contrary, one-third retire each year. The members at the same time represent on the board of guardians of the union the parishes from which they have been elected, although the two bodies are legally distinct. The council must meet at least once a month. Its chairman, who during his year of office is *ex-officio* a justice of the peace, may be chosen from among the councillors or from outside; and the same is true of members of committees. The principal salaried and permanent officials are the clerk, the treasurer, a medical officer, a surveyor, and sanitary inspectors. The functions of the councils pertain, in the main, to the administration of sanitation and of highways. The bodies are responsible largely for the execution in the rural localities of the various public health acts, and they have charge of all highways which are not classed as "main roads." To meet in part the costs of this administration they are empowered to levy district rates.

**195. The Parish.**—Of parishes there are two types, the rural and the urban, and their aggregate number in England and Wales is approximately 15,000. The urban parishes possess no general administrative importance and further mention need not be made of them here. Under the act of 1894 the rural parish, however, has been revived in a measure from the inert condition into which it had fallen, and it to-day fills an appreciable if humble place in the rural administrative régime. The style of its organization is dependent to a degree upon its population. In each parish there is a meeting in which all persons on the local government and parliamentary registers (including women and lodgers) are privileged to participate. This meeting elects its own chairman, and it likewise chooses a number of overseers whose duty it is to assess and collect certain local rates, to administer the poor-rate, and to make up the electoral and jury lists. All parishes whose population numbers as much as three hundred have a council composed of from five to fifteen members (women being eligible), elected as a rule for a term of three years. The list of powers which the parish authorities may exercise is extended, if not imposing. It includes the maintenance of foot-paths, the management of civil parochial property, the provision of fire protection, the inspection of local sanitation, and the appointment of trustees of civil charities within the parish. The meagerness of the population of large numbers of the parishes, however, together with the severe limitations imposed both by law and by practical conditions upon rate-levying powers, preclude the authorities very

generally from undertaking many or large projects. It is regarded commonly that the parishes are too small to be made such areas of public activity as the authors of the act of 1894 had in mind. Practically, the parish is little more than a unit for the election of representatives and the collection of rates.[1]

For purposes of poor-law administration, as has been pointed out, there have existed since 1834 poor-law unions, consisting of numbers of parishes grouped together, usually without much effort to obtain equality of size or population. These unions not infrequently comprise both rural and urban parishes, and in cases of this kind the board of guardians is composed of the persons elected as district councillors in the rural parishes of the union, together with other persons who are elected immediately as guardians in the urban parishes and have no other function. The conditions under which poor relief is administered are prescribed rather minutely in general regulations laid down by the Local Government Board at London, so that, save in the matter of levying rates, the range of discretion left to the boards of guardians is closely restricted.[2]

## VIII. Local Government To-day: Urban

**196. The Urban District.**—Of areas within which are administered the local affairs of the urban portions of the kingdom there are several of distinct importance, although in reality the institutions of urban government are less complex than they appear on the surface to be. In the main, the legal basis of urban organization is the Municipal Corporations Consolidation Act of 1882, which comprises a codification of the Municipal Corporations Act of 1835 and a mass of subsequent and amending legislation. This great statute is supplemented at a number of points by the Local Government Act of 1888, the District and Parish Councils Act of 1894, the Education Act of 1902, and other regulative measures of the past thirty years. At the bottom of the scale among urban governmental units stands the urban district, which differs from an ordinary borough principally in that it has no charter and its council possesses less authority than does that of the borough.[3] The number of urban districts is in the neighborhood of eight hundred. Under the terms of the act of 1894 the governing authority in each is a council consisting of members elected for three years, women being eligible. There are no aldermen, and

[1] Lowell, Government of England, II., 281.
[2] Ashley, Local and Central Government, 52–60.
[3] Speaking strictly, a borough is an urban district, and something more.

no mayor is chosen. The council elects its own chairman and other officers, and it meets at least once a month. Its functions, of which the most important is the control of sanitation and of highways, are discharged largely through the agency of committees. The district council possesses none of the police and judicial privileges which the borough councils commonly enjoy. It is more closely controlled by the Local Government Board, and, in general, it lacks "the status and ornamental trappings of a municipal authority.[1]" Yet in practice its powers are hardly less extensive than are those of the council of a full-fledged borough. New urban districts may be created in thickly populated localities by joint action of the county council and the Local Government Board.

**197. Boroughs and "Cities."**—The standard type of municipal unit is the borough. Among boroughs there is a certain amount of variation, but the differences which exist are those rather of historic development and of nomenclature than of governmental forms or functions. There are "municipal" boroughs, "county" boroughs, and cities. Any non-rural area upon which has been conferred a charter stipulating rights of local self-government is a borough. Areas of the sort which have been withdrawn from the jurisdiction of the administrative counties in which they are situated are county boroughs; those not so withdrawn are municipal boroughs. The term "city" was once employed to designate exclusively places which were or had been the seat of a bishop. Nowadays the title is borne not only by places of this nature but also by places, as Sheffield and Leeds, upon which it has been conferred by royal patent. Save, however, in the case of the city of London, where alone in England ancient municipal institutions have been generally preserved, the term possesses no political significance.[2] The governments of the cities are identical with those of the non-city boroughs. It is to be observed, further, that whereas formerly the borough as organized for municipal purposes coincided with the borough as constituted for purposes of representation in Parliament, there is now no necessary connection between the two. An addition to a municipal borough does not alter the parliamentary constituency.

**198. Kinds of Boroughs.**— The Municipal Corporations Act of 1835 made provision for 178 boroughs in England and Wales and stipulated conditions under which the number might be increased from time to time by royal charter. In not a few instances the charters of boroughs at the time existing were of mediæval origin. Since 1875

[1] Ashley, Local and Central Government, 45.

[2] See p. 190.

new charters have been conferred until the number of boroughs has been brought up to approximately 350. For the obtaining of a borough charter no fixed requirement of population is laid down. Each application is considered upon its merits, and while the size and importance of an urban community weigh heavily in the decision other factors not infrequently are influential, with the consequence that some boroughs are very small while some urban centers of size are not yet boroughs. Of the present number of boroughs, seventy-four, or about one-fifth, are county boroughs. By the act of 1888 it was provided that every borough which had or should attain a population of 50,000 should be deemed, for purposes of administration, a separate county, and should therefore be exempt from the supervision exercised over the affairs of the municipal boroughs by the authorities of the administrative counties. Any borough with a population exceeding the figure named may be created a county borough by simple order of the Local Government Board. Unlike the ordinary municipal borough, the county borough is not represented in the council of the county in which the borough lies; on the contrary, the council of the borough exercises substantially an equivalent of the powers exercised normally by the county council, and it is, to all intents and purposes, a council of that variety. Much the larger portion of the English boroughs are, however, simple municipal boroughs, whose activities are subject to a supervision more or less constant upon the part of the county authorities.

**199. The Borough Authorities.**—The difference between county and municipal boroughs is thus one of degree of local autonomy, not one of forms or agencies of government. The charters of all boroughs have been brought into substantial agreement and the organs of borough control are everywhere the same. The governing authority is the borough council, which consists of councillors, aldermen, and a mayor, sitting as a single body. The councillors, varying in number from nine to upwards of one hundred, are elected by the voters of the borough, either at large or by wards, for three years, and one-third retire annually. The aldermen, equal in number to one-third of the councillors, are chosen by the entire council for six years, and are selected usually from among the councillors of most prolonged experience. The mayor is elected annually by the councillors and aldermen, frequently from their own number. In boroughs of lesser size re-elections are not uncommon. Service in all of the capacities mentioned is unpaid. The council determines its own rules of procedure, and its work is accomplished in large measure through the agency of committees, some of which are required by statute, others of which

are created as occasion demands; but, unlike the county council, the council of the borough cannot delegate any of its powers, save those relating to education, to these committees. The mayor presides over the council meetings, serves commonly as an *ex-officio* member of committees, and represents the municipality upon ceremonial occasions. The office is not one of power, although it is possible for an aggressive and tactful mayor to wield real influence. The permanent officers of the council include a clerk, a treasurer, a medical official, a secretary for education, and a variable number of inspectors and heads of administrative departments.

**200. The Borough Council.**—In the capacity of representative authority of the municipality the council controls corporation property, adopts and executes measures relative to police and education, levies rates, and not infrequently administers waterways, tramways, gas and electric plants, and a variety of other public utilities. The enormously increased activity of the town and urban district councils in respect to "municipal trading" within the past two score years has aroused widespread controversy. The purposes involved have been, in the main, two—to avert the evils of private monopoly and to obtain from remunerative services something to set against the heavy unremunerative expenditures rendered necessary by existing sanitary legislation. And, although opposed by reason of the outlays which it requires and the invasion of the domain of private enterprise which it constitutes, the device of municipal ownership is being ever more widely adopted, as in truth it is also in Germany and other European countries.[1] Aside from its general functions, the borough council is in particular a sanitary authority, and among its most important tasks is the execution of regulations concerning drainage, housing, markets, hospitals, and indeed the entire category of matters provided for in the long series of Public Health acts. The expenditures of the council as a municipal authority are met from a fund made up of fees, fines, and other proceeds of administration, together with the income from a borough rate, which is levied on the same basis as the poor rate; its expenditures as a sanitary authority are met from a fund raised by a general district rate. To assist in the administration of education, sanitation, and police, grants are made regularly by Parliament.[2]

[1] Ashley, Local and Central Government, 42.

[2] The best of existing works upon the general subject of English local government is J. Redlich, and F. W. Hirst, Local Government in England, 2 vols. (London, 1903). There are several convenient manuals, of which the most useful are P. Ashley, English Local Government (London, 1905); W. B. Odgers, Local Government (London, 1899), based on the older work of M. D. Chalmers; E. Jenks, An Outline of English Local Government (2d ed., London, 1907); R. S. Wright and

**201. The Government of London.**—The unique governmental arrangements of London are the product in part of historical survival and in part of special and comparatively recent legislation. Technically, the "city" of London is still what it has been through centuries, i. e., an area with a government of its own comprising but a single square mile on the left bank of the Thames. By a series of measures covering a period of somewhat more than fifty years, however, the entire region occupied by the densely populated metropolis has been drawn into a closely co-ordinated scheme of local administration. London was untouched by the Municipal Corporations Act of 1835 and the changes by which the governmental system of the present day was brought into being began to be introduced only with the adoption of the Metropolis Management Act of 1855. The government of the city was left unchanged, but the surrounding parishes, hitherto governed independently by their vestries, were at this time brought for certain purposes under the control of a central authority known as the Metropolitan Board of Works. The Local Government Act of 1888 carried the task of organization a stage further. The Board of Works was abolished, extra-city London was transformed into an

H. Hobhouse, An Outline of Local Government and Local Taxation in England and Wales (3d ed., London, 1906); and R. C. Maxwell, English Local Government (London, 1900), in Temple Primer Series. The subject is treated admirably in Lowell, Government of England, II., Chaps. 38–46, and a portion of it in W. B. Munro, The Government of European Cities (New York, 1909), Chap. 3 (full bibliography, pp. 395–402). There are good sketches in Ashley, Local and Central Government, Chaps. 1 and 5, and Marriott, English Political Institutions, Chap. 13. A valuable group of papers read at the First International Congress of the Administrative Sciences, held at Brussels in July, 1910, is printed in G. M. Harris, Problems of Local Government (London, 1911). A useful compendium of laws relating to city government is C. Rawlinson, Municipal Corporation Acts, and Other Enactments (9th ed., London, 1903). Two appreciative surveys by American writers are A. Shaw, Municipal Government in Great Britain (New York, 1898) and F. Howe, The British City (New York, 1907). On the subject of municipal trading the reader may be referred to Lowell, Government of England, II., Chap. 44; Lord Avebury, Municipal and National Trading (London, 1907); L. Darwin, Municipal Ownership in Great Britain (New York, 1906); G. B. Shaw, The Common Sense of Municipal Trading (London, 1904); and C. Hugo, Städteverwaltung und Municipal-Socialismus in England (Stuttgart, 1897). Among works on poor-law administration may be mentioned T. A. Mackay, History of the English Poor Law from 1834 to the Present Time (New York, 1900); P. T. Aschrott and H. P. Thomas, The English Poor Law System, Past and Present (2d ed., London, 1902); and S. and B. Webb, English Poor Law Policy (London, 1910). The best treatise on educational administration is G. Balfour, The Educational Systems of Great Britain and Ireland (2d ed., London, 1904). Finally must be mentioned C. Gross, Bibliography of British Municipal History (New York, 1897), an invaluable guide to the voluminous literature of an intricate subject.

administrative county of some 120 square miles, and upon the newly created London County Council (elected by the rate-payers) was conferred a varied and highly important group of powers. Finally, in 1899 the London Government Act simplified the situation by sweeping away a mass of surviving authorities and jurisdictions and by creating twenty-eight metropolitan boroughs, each with mayor, aldermen, and councillors such as any provincial borough possesses, though with powers specially defined and, on the side of finance, somewhat restricted. Within each borough are urban parishes, each with its own vestry.

At the center of the metropolitan area stands still the historic City, with its lord mayor, its life aldermen, and its annually elected councillors, organized after a fashion which has hardly changed in four and a half centuries. Within the administrative county the county council acts as a central authority, the borough councils and the parish vestries serve as local authorities. While areas of common administration still very much larger than the county comprise, among others, the districts of the Metropolitan Water Board and of the Metropolitan Police. The jurisdiction of the Metropolitan Police extends over all parishes within fifteen miles of Charing Cross, an area of almost 700 square miles.[1]

[1] For excellent descriptions of the government of London see Munro, Government of European Cities, 339–379 (bibliography, 395–402), and Lowell, Government of England, II., 202–232. Valuable works are G. L. Gomme, Governance of London: Studies on the Place occupied by London in English Institutions (London, 1907); ibid., The London County Council: its Duties and Powers according to the Local Government Act of 1888 (London, 1888); A. MacMorran, The London Government Act (London, 1899); A. B. Hopkins, Boroughs of the Metropolis (London, 1900); and J. R. Seager, Government of London under the London Government Act (London, 1904). A suggestive article is G. L. Fox, The London County Council, in *Yale Review*, May, 1895.

# PART II.—GERMANY

## CHAPTER IX

### THE EMPIRE AND ITS CONSTITUTION

#### I. Political Development Prior to 1848

**202. Napoleonic Transformations.**—Among the political achievements of the past hundred years few exceed in importance, and none surpass in interest, the creation of the present German Empire. The task of German unification may be regarded as having been brought formally to completion upon the occasion of the memorable ceremony of January 18, 1871, when, in the presence of a brilliant concourse of princes and generals gathered in the Hall of Mirrors in the palace of the French kings at Versailles, William I., king of Prussia, was proclaimed German Emperor. Back of the dramatic episode at Versailles, however, lay a long course of nationalizing development, of which the proclamation of an Imperial sovereign was but the culminating event. The beginnings of the making of the German Empire of to-day are to be traced from a period at least as remote as that of Napoleon.

Germany in 1814 was still disunited and comparatively backward, but it was by no means the Germany of the seventeenth and eighteenth centuries. The transformations wrought to the east of the Rhine during the period of the Napoleonic ascendancy were three-fold. In the first place, after more than a thousand years of existence, the Holy Roman Empire was, in 1806, brought to an end, and Germany, never theretofore since the days of barbarism entirely devoid of political unity, was left without even the semblance or name of nationality. In the second place, there was within the period a far-reaching readjustment of the political structure of the German world, involving (1) the reducing of the total number of German states—kingdoms, duchies, principalities, ecclesiastical dominions, and knights' holdings—from above three hundred to two score; (2) the augmenting of the importance of Austria by the acquisition of a separate imperial title,[1]

[1] In anticipation of the prospective abolition of the dignity of Emperor of the Holy Roman Empire, the Emperor Francis II., in 1804, assumed the title of Emperor of Austria, under the name Francis I.

and the raising of Saxony, Bavaria, and Württemberg from duchies to kingdoms; and (3) the bringing into existence of certain new and more or less artificial political aggregates, namely, the kingdom of Westphalia, the grand-duchy of Warsaw, and the Confederation of the Rhine, for the purpose of facilitating the Napoleonic dominance of north-central Europe. Finally, in several of the states, notably Prussia, the overturn occasioned by the Napoleonic conquests prompted systematic attempts at reform, with the consequence of a revolutionizing modernization of social and economic conditions altogether comparable with that which within the generation had been achieved in France.

The simple reduction of the German states in number, noteworthy though it was, did not mean necessarily the realization of a larger measure of national unity, for the rivalries of the states which survived tended but to be accentuated. But if the vertical cleavages by which the country was divided were deepened, those of a horizontal character, arising from social and economic privilege, were in this period largely done away. Serfdom was abolished; the knights as a political force disappeared; the free cities were reduced to four; and such distinctions of caste as survived rapidly declined in political importance. By an appreciable levelling of society the way was prepared for co-ordinated national development, while by the extinction of a variety of republican and aristocratic sovereignties monarchy as a form of government acquired new powers of unification and leadership.[1]

**203. The Congress of Vienna and the Confederation of 1815.**— The collapse of the dominion of Napoleon was followed in Germany by rather less of a return to earlier arrangements than might have been expected. Indeed, it can hardly be said to have involved any such return at all. The Confederation of the Rhine was dissolved, and both the grand-duchy of Warsaw and the kingdom of Westphalia ceased, as such, to be. But the Holy Roman Empire was not revived; the newly acquired dignities of the sovereigns of Saxony, Bavaria, and other states were perpetuated; despite the clamors of the mediatized princes, the scores of German states which during the decade had been swallowed up by their more powerful neighbors, or had been otherwise blotted out, were not re-established; and—most important of all—the social and economic changes by which

[1] On Germany during the Napoleonic period see Cambridge Modern History, IX., Chap. 11; J. H. Rose, Life of Napoleon I., 2 vols. (new ed., New York, 1910), II., Chaps. 24–25; A. Fournier, Napoleon I., a Biography, trans. by A. E. Adams, 2 vols. (New York, 1911), I., Chaps. 11–12; J. R. Seeley, Life and Times of Stein; or Germany and Prussia in the Napoleonic Age, 3 vols. (Cambridge, 1878); H. A. L. Fisher, Studies in Napoleonic Statesmanship, Germany (Oxford, 1903).

the period had been given distinction were, in large part, not undone.

As has been pointed out, the close of the Napoleonic period found Germany entirely devoid of political unity, in both name and fact. By the governments which were chiefly influential in the reconstruction of Europe in 1814–1815, it was deemed expedient that there be re-established some degree of German unity, though on the part of most of them, both German and non-German, there was no desire that there be called into existence a united German nation of substantial independence and power. In the Final Act of the Congress of Vienna, promulgated under date of June 9, 1815, there was included the draft of a constitution, prepared by a committee of the Congress under the presidency of Count Metternich, in which was laid down the fundamental law of an entirely new German union. Within Germany proper there were recognized to be, when the Congress had completed its work of readjustment, thirty-eight states, of widely varying size, importance, and condition. Under authorization of the Congress, these states were now organized, not into an empire with a common sovereign, but into a *Bund*, or Confederation, whose sole central organ was a *Bundestag*, or Diet, sitting at Frankfort-on-the-Main and composed of delegates commissioned by the sovereigns of the affiliated states and serving under their immediate and absolute direction. Save only in respect to certain matters pertaining to foreign relations and war, each of the thirty-eight states retained its autonomy unimpaired.[1]

**204. The Diet.**—The Diet was in no proper sense a parliamentary body, but was rather a congress of sovereign states. Nominally, its powers were large. They included both the regulation of the fundamental law and the performance of the functions of ordinary legislation. But, in practice, the authority of the body was meager and exercise of discretion was absolutely precluded. The members, as delegates of the princes, spoke and voted only as they were instructed. Questions relating to the fundamental laws and the organic institutions of the Confederation and "other arrangements of common interest" were required to be decided by the Diet as a whole (*in Plenum*), with voting power distributed among the states, in rough proportion to their importance. Of the total of 69 votes, six of the principal states possessed four each. The preparation of measures for discussion *in Plenum* was intrusted to the "ordinary assembly,"

[1] In 1817 the number was brought up to 39 by the adding of Hesse-Homburg, unintentionally omitted when the original list was made up. By successive changes the number was reduced to 33 before the dissolution of the Confederation in 1866.

a smaller gathering in which Austria, Prussia, and nine other states had each one vote, and six *curiæ*, comprising the remaining states in groups had likewise each a single vote. The presidency of the two assemblies was vested permanently in Austria, and the Austrian delegation possessed in each a casting vote. Proposals were carried in the smaller body by simple majority, but *in Plenum* only by a two-thirds vote. For the enactment of fundamental laws, the modification of organic institutions, the amendment of individual rights, and the regulation of religious affairs, it was declared by the Federal Act that a majority vote should be insufficient, and, although it was not expressly so stipulated, the intent was that in such cases unanimity should be required. Early in the Diet's history, indeed, the president was instructed solemnly to announce that the fundamental law of the Confederation, far from being subject to revision, was to be regarded as absolutely final.

The Confederation was, and was intended to be, only the loosest sort of a league of sovereign powers. The party of German unity, represented by Stein and the Liberals generally, began by assuming it to be a *Bundesstaat*, or true federal state; but at the opening of the first session of the Diet (November 5, 1816) the Austrian authorities formally pronounced it a *Staatenbund*, or federation of states, and from this ruling, according strictly with both the facts of the situation and the intent of the founders, there was no possible escape. The powers and functions which were vested in the Confederation were exercised exclusively through and upon states, and with the private individual it had no sort of direct relation, being, in these respects, essentially similar to the federal government of the United States under the Articles of Confederation. The function of the Diet, in effect, came to be little more than that of registering and promulgating the decrees of the authorities at Vienna.

**205. Constitutional Progress, 1815–1848.**—Notwithstanding these facts, the decade which terminates with the creation of the Confederation of 1815 contributed enormously to the clearing of the way for the establishment of modern German unity and of vigorous and efficient national government. Among large numbers of the German people there had been engendered a genuine desire, not only for constitutionalism in government, but for a substantial unification of the German-speaking world; and the increased homogeneity and prosperity of the kingdom of Prussia pointed already to the eventual realization of these aspirations under the leadership of that powerful state. The history of Germany during the period from 1815 to 1848 is a story largely of the growth of these

twin ideas of constitutionalism and nationality, and of the relentless combat which was waged between their exponents and the entrenched forces of autocracy and particularism. Gradually the results of this conflict found expression through two developments, (1) the promulgation of liberalizing constitutions in a majority of the states and (2) the building of the Zollverein, or customs union.

The original draft of the Federal Act of 1815 pledged every member of the Confederation to establish a constitution within a year. In the final form of the instrument, however, the time limit was omitted and what had been a specific injunction became but a general promise. The sovereigns of the two preponderating states, Austria and Prussia, delayed and eventually evaded the obligation altogether. But in a large number of the lesser states the promise that had been made was fulfilled with despatch. In the south the ground had been cleared by the Napoleonic domination, and the influence of French political experimentation was more generally felt, so that, very naturally, the progress of constitutionalism was most rapid in that quarter. The new era of constitution-making was inaugurated by the promulgation of the fundamental law of Schwarzburg-Rudolstadt, January 8, 1816. In rapid succession followed similar grants in Schaumburg-Lippe, January 15, 1816; Waldeck, April 19, 1816; the grand-duchy of Saxe-Weimar-Eisenach, May 5, 1816; Saxe-Hildburghausen, March 19, 1818; Bavaria, May 26, 1818; Baden, August 22, 1818; Lichtenstein, November 9, 1818; Württemberg, September 25, 1819; Hanover, December 7, 1819; Brunswick, April 25, 1820, and the grand-duchy of Hesse, December 17, 1820. Instruments promulgated later during the period under review include those of Saxe-Meiningen, in 1829; Hesse-Cassel, Saxe-Altenburg, and Saxony, in 1831; Hohenzollern-Sigmaringen, in 1833; Lippe, in 1836; and Lübeck, in 1846. In a number of the states mentioned, including Bavaria, Baden, Württemberg, and Saxony, the constitutions at this time granted are still in operation. Many of them were, and some of them remain, highly illiberal. But, in the aggregate, the ground gained in behalf of constitutional and enlightened government through their promulgation was enormous.

The spread of constitutionalism was paralleled by the gradual creation, after 1818, of the Zollverein. This was a customs union, taking its origin in the establishment of free trade throughout the kingdom of Prussia, and extended from state to state until by 1842 the whole of Germany had been included save the Hanseatic towns, Mecklenburg, Hanover, and Austria. The union was maintained for purposes that were primarily commercial, but by accustoming the people to concerted effort and by emphasizing constantly their common interests

it must be regarded as having contributed in a very important way to the growth of national consciousness and solidarity. Under its agency the lesser states were schooled deliberately in independence of Austria and in reliance upon Prussian leadership.

## II. The Creation of the Empire

**206. The Revolution of 1848.**—From 1815 onwards the Liberals advocated, in season and out, the conversion of the Confederation into a more substantial union under a constitutional style of government. Aside from the promulgation of a number of new state constitutions, the effects of the revolutionary movements of 1830 were, in Germany, of little consequence. But during the period 1830–1848 conditions so developed that only the stimulus of a near-by liberal demonstration was required to precipitate to the east of the Rhine a popular uprising of revolutionary proportions. In the constitutional history of the German countries of central Europe few periods are to be assigned larger importance than the years 1848–1849. Taking advantage of the interest created by the contemporary revolution in France, the Liberal leaders began by convening at Heidelberg, March 31, 1848, a *Vorparlament*, or preliminary meeting, by which arrangements were effected for the election, by manhood suffrage, of a national assembly of some six hundred members whose business it should be to draw up a constitution for a united German nation. This assembly, reluctantly authorized by the Diet, convened May 18 in the free city of Frankfort. The task to be accomplished was formidable and much valuable time was consumed in learned but irrelevant disputation. In the end it was decided that not the whole of Austria, but only the German portions, should be admitted to the new union; that there should be established a full-fledged parliamentary system, with a responsible ministry; and that the parliament should consist of two chambers, the lower to be chosen by direct manhood suffrage, the upper to be made up half of members appointed by the princes and half of members elected for six years by the legislative bodies of the several states. As an executive some desired a directory of three princes and some wanted a single president; but the majority voted at length to establish the dignity of German Emperor and to offer it to Frederick William IV., king of Prussia.

**207. The Reaction.**—The refusal of the Prussian monarch to accept the proffered title, save upon the impossible condition that all of his brother princes in Germany should give their assent to his so doing, blasted the hopes of the patriots. In May, 1849, the Frankfort assembly

broke up. Not long thereafter Prussia, Saxony, and Hanover agreed upon a constitution substantially like that which the Frankfort meeting had proposed. Other states accepted it, and March 20, 1850, a parliament was convened under it at Erfurt. By reason of the recovery of Austria, however, and the subsidence of the revolutionary movement generally throughout Germany the experiment promptly collapsed. The conception of a German empire had been formulated with some definiteness, but for its realization the day had not yet arrived. The old Confederation, under Austrian domination, kept the field. After an upheaval which involved the enforced promulgation of a constitution, the accession of a new emperor (the present Francis Joseph), and the threatened loss of Hungary, Bohemia, and the Italian dependencies, the Austrian monarchy recovered its balance and inaugurated a fresh era of reaction, during the course of which there was revoked not only the constitution conceded at Vienna but also that of almost every one of the German states.[1]

In Prussia the outcome was more fortunate. In January, 1850, Frederick William IV. granted a constitution which established a national legislative assembly and admitted a portion of the Prussian people to an active participation in the government. Although the instrument proved a disappointment to the Liberals, it has survived, with some modifications, to the present day as the fundamental law of the Prussian kingdom; and the fact that Prussia had become fixedly a constitutional state, together with the hopeless deadlock which arose between Prussia and Austria in the attempted readjustments of 1848–1849, emphasized the conclusion that the future of Germany lay with Prussia rather than with Austria, and that, indeed, there could be no adequate unification of the German people until one of the two great rival states should have been definitely ejected.[2]

**208. The War of 1866.**—With the elevation of Count von Bismarck, September 23, 1862, to the presidency of the Prussian ministry, affairs began to move rapidly toward the inevitable conclusion. A month prior to Bismarck's appointment there had been held at Frankfort a conference—the so-called *Fürstentag*—whose object was the proposal of a plan for the reconstitution of the Confederation. The scheme suggested contemplated the establishment of a directory, an assembly composed of delegates from the various diets, and a federal court of

[1] See pp. 454–456.

[2] On the revolution of 1848 in Germany see Cambridge Modern History, XI., Chaps. 3, 6, 7; H. von Sybel, The Founding of the German Empire trans. by M. L. Perrin, 7 vols. (New York, 1890–1898), I., 145–243; H. Blum, Die deutsche Revolution, 1848–1849 (Florence and Leipzig, 1897); P. Matter, La Prusse et la révolution de 1848 (Paris, 1903).

appeal. The conference was held at the instigation of Austria, and it was intended primarily to promote an alignment of the liberal forces against Prussia. The last-mentioned state refused, naturally, to have part in the proceedings, and the enterprise came to naught. A brief interlude in the fast developing contest was afforded by the Austro-Prussian alliance against Denmark in 1864; but the net result of this episode was only to supply the occasion for war which Bismarck desired. In 1866 Prussia came forward with a project for the reorganization of the Confederation (in reality, a counter-bid for popular support), the more noteworthy features of which were the total exclusion of Austria from the league and the establishment of a parliament elected by manhood suffrage. As was inevitable, the Diet rejected the scheme; whereupon, with the object of forcing Austria into helpless isolation, Bismarck and his royal master, William I., in June, 1866, proclaimed the Confederation to be dissolved and plunged the whole of Germany in civil war.

**209. The North German Bund, 1867.**—The conflict was short and sharp. Its outcome was the crushing defeat of Austria, and in the treaty of Prague (August 23, 1866) the proud Hapsburg monarchy was compelled to assent to a reconstitution of the German federation in which Austria should have no part. A number of lesser states which had supported Austria—Hanover, Nassau, Hesse-Cassel, and Frankfort—were forthwith incorporated by Prussia, by decree of September 20, 1866,[1] and among the group of surviving powers the preponderance of Prussia was more than ever indisputable. Realizing, however, that the states of the south—Bavaria, Baden, Württemberg, and Hesse-Darmstadt—were not as yet ready to be incorporated under a centralized administration, Prussia contented herself for the moment with setting up a North German *Bund*, comprising the states to the north of the river Main, twenty-two in all. February 24, 1867, there was brought together in Berlin a constitutional diet, representing all of the affiliated states and elected by manhood suffrage and secret ballot. A constitution, drafted previously by a committee of plenipotentiaries, was debated from March 9 to April 16 and was adopted by a vote of 230 to 53. After having been ratified by the legislative bodies of the various states, the instrument was put in operation, July 1. The principal organs of government for which it made provision were three in number: (1) the *Præsidium*, or President, of the Confederation, the dignity being hereditary and vested in the king of Prussia; (2) the *Bundesrath*, or Federal Council, representing the various governments; and (3) the *Bundestag*, or Diet, composed of deputies elected directly

[1] The disputed districts of Schleswig-Holstein were annexed at the same time.

by manhood suffrage. For all practical purposes the German Empire, under the hegemony of Prussia, was a reality.

**210. Establishment of the Empire, 1871.**—For the time being the states to the south of the Main were left to their own devices, though the constitution of the *Bund* was shaped purposely to permit, and even to encourage, the accession of new members. Very soon these southern states entered the new customs union of 1867, maintained by the northern states, and ere long they were concluding with Prussia treaties of both offensive and defensive alliance. The patriotic fervor engendered by the war with France in 1870–1871 sufficed to complete the work. Contrary to the expectation of Napoleon III., the states of the south contributed troops and otherwise co-operated vigorously with the Prussians throughout the contest, and before its close they let it be known that they were ready to become full-fledged members of the Confederation. On the basis of treaty arrangements, concluded in November, 1870, it was agreed that the North German Confederation should be replaced by a German Empire, and that for the title of President, borne by the Prussian sovereign, should be substituted that of *Deutscher Kaiser*, German Emperor. January 18, 1871, at Versailles, William, king of Prussia and President of the Confederation, was formally proclaimed German Emperor. The siege of Paris was at the time still in progress, and the treaty of Frankfort, by which peace with France was concluded, was not signed until the following May.[1]

[1] For brief accounts of the founding of the Empire see B. E. Howard, The German Empire (New York, 1906), Chap. 1; E. Henderson, Short History of Germany (New York, 1906), Chaps. 8–10; Cambridge Modern History, XI., Chaps. 15–17, XII., Chap. 6; and Lavisse et Rambaud, Histoire Générale, XI., Chap. 8. A very good book is G. B. Malleson, The Refounding of the German Empire, 1848–1871 (2d ed., London, 1904). More extended presentation of German history in the period 1815–1871 will be found in A. Stern, Geschichte Europas seit den Vertägen von 1815 bis zum Frankfurter Frieden von 1871, 6 vols. (Berlin, 1894–1911), extending at present to 1848; C. F. H. Bulle, Geschichte der neuesten Zeit, 4 vols. (Leipzig, 1886–1887), covering the years 1815–1885; H. G. Treitschke, Deutsche Geschichte im Neunzehnten Jahrhundert, 5 vols. (Leipzig, 1879–1894), covering the period to 1848; H. von Sybel, Die Begründung des deutschen Reiches durch Wilhelm I. (Munich and Leipzig, 1890), and in English translation under title of The Founding of the German Empire (New York, 1890); H. von Zwiedeneck-Sudenhorst, Deutsche Geschichte von der Auflösung d. alten bis zur Errichtung d. neuen Kaiserreichs (Stuttgart, 1903–1905); and M. L. Van Deventer, Cinquante années de l'histoire fédérale de l'Allemagne (Brussels, 1870). A book of some value is A. Malet, The Overthrow of the Germanic Confederation by Prussia in 1866 (London, 1870). P. Bigelow, History of the German Struggle for Liberty (New York, 1905) is readable, but not wholly reliable. An excellent biography of Bismarck is that by Headlam (New York, 1899). For full bibliography see Cambridge Modern History, X., 826–832; XI., 879–886, 893–898; XII., 869–875.

## III. The Constitution: Nature of the Empire

**211. The Constitution Framed.** —As ordained in the treaties of November, 1870, ratified subsequently by the *Bundesrath* and the *Bundestag* of the North German Confederation, and by the legislative assemblies of the four incoming states, the German Empire came legally into existence January 1, 1871. It consisted fundamentally of the Confederation, which in the process of expansion did not lose its corporate identity, together with the four states, whose treaties bound them severally to it. The *Bund* was conceived of technically, not as replaced by, but rather as perpetuated in, the new Empire. The accession of the four southern states, however, involved of necessity a considerable modification of the original character of the affiliation; and the innovations that were introduced called for a general reconstitution of the fundamental law upon which the enlarged structure was to be grounded.

The elements at hand for the construction of the constitution of the Empire were four: (1) the constitution of the North German Confederation, in operation since 1867; (2) the treaties of November 15, 1870, between the Confederation, on the one hand, and the grand-duchies of Baden and Hesse on the other; (3) the treaty of November 23, 1870, by which was arranged the adhesion of the kingdom of Bavaria; and (4) the treaty of November 25, 1870, between the *Bund*, Baden, and Hesse, on the one side, and the kingdom of Württemberg on the other. Each of these treaties stipulated the precise conditions under which the new affiliation should be maintained, these stipulations comprising, in effect, so many projected amendments of the original constitution of the *Bund*.[1] At the initiative of the Emperor there was prepared, early in 1871, a revised draft of this constitution, and in it were incorporated such modifications as were rendered necessary by the adhesion of the southern states and the creation of the Imperial title. March 31 the Reichstag was convened in Berlin and before it was laid forthwith the constitutional *projet*, to which the Bundesrath had already given its assent. April 14 the instrument was approved by the popular chamber, and two days later it was promulgated as the supreme law of the land.

**212. Contents of the Instrument.**—As it came from the hands of its framers, the new constitution comprised a judicious amalgamation of the various fundamental documents that have been mentioned, i. e., the constitution of the Confederation and the treaties. Within

[1] The first three of these treaties were concluded at Versailles; the fourth was signed at Berlin.

the scope of its seventy-eight articles most subjects which are dealt with ordinarily in such instruments find ample place: the nature and extent of the legislative power; the composition, organization, and procedure of the legislative chambers; the privileges and powers of the executive; the adjustment of disputes and the punishment of offenses against the national authority; the process of constitutional amendment. It is a peculiarity of the German constitution, however, that it contains elaborate provisions relating to a variety of things concerning which constitutions, as a rule, are silent. There is an extended section upon customs and commerce; another upon railways; another upon posts and telegraphs; another upon navigation; another upon finance; and an especially detailed one relating to the military organization of the realm. In part, the elaboration of these essentially legislative subjects within the constitution was determined by the peculiarly federal character of the Empire, by which was entailed the necessity of a minute enumeration of powers. In a greater measure, however, it arose from the underlying purpose of Bismarck and of William I. to smooth the way for the conversion of Germany into the premier militant power of Europe. Beyond a guarantee of a common citizenship for all Germany and of equal protection for all citizens as against foreign powers, the constitution contains little that relates to the status or privileges of the individual. There is in it no bill of rights, and it makes no mention of abstract principles. Among instruments of its kind, none is of a more thoroughly practical character.[1]

**213. Federal Character of the Empire.**—The political system of Germany to-day is the product of centuries of particularistic statecraft, capped, in 1871, by a partial centralization of sovereign organs and powers. The Empire is composed of twenty-five states: the four kingdoms of Prussia, Bavaria, Saxony, and Württemberg; the six grand-duchies of Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, and Oldenburg; the five duchies of Brunswick, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, and Anhalt;

[1] The text of the constitution, in German, is printed in A. L. Lowell, Governments and Parties in Continental Europe, 2 vols. (Boston, 1896), II., 355–377, and in Laband, Deutsches Reichsstaatsrecht, 411–428; in English, in W. F. Dodd, Modern Constitutions, 2 vols. (Chicago, 1909), I., 325–351, and in Howard, The German Empire, 403–435. Carefully edited German texts are: L. von Rönne, Verfassung des deutschen Reiches (8th ed., Berlin, 1899); A. Arndt, Verfassung des deutschen Reiches (Berlin, 1902). On the formation of the Imperial constitution see A. Lebon, Les origines de la constitution allemande, in *Annales de l'École Libre des Sciences Politiques*, July, 1888; ibid., Études sur l'Allemagne politique (Paris, 1890).

the seven principalities of Schwarzburg-Sonderhausen, Schwarzburg-Rudolstadt, Waldeck, Reuss Älterer Linie, Reuss Jüngerer Linie, Lippe, and Schaumburg-Lippe; and the three free cities of Hamburg, Bremen, and Lübeck. These states vary in size from Prussia, with 134,616 square miles, to Bremen, with 99; and in population, from Prussia, with 40,163,333, to Schaumburg-Lippe, with 46,650. There is, in addition, the *Reichsland*, or Imperial domain, of Alsace-Lorraine, whose status until 1911 was that of a purely dependent territory, but which by act of the year mentioned was elevated to a condition of quasi-statehood.[1]

Prior to the formation in 1867, of the North German Confederation, each of the twenty-five states was sovereign and essentially independent. Each had its own governmental establishment, and in many instances the existing political system was of considerable antiquity. With the organization of the *Bund*, those states which were identified with the federation yielded their independence, and presumably their sovereignty; and with the establishment of the Empire, all gave up whatever claim they as yet maintained to absolute autonomy. Both the *Bund* and the Empire were creations, strictly speaking, of the states, not of the people; and, to this day, as one writer has put it, the Empire is "not a juristic person composed of fifty-six million members, but of twenty-five members."[2] At the same time, it is not what the old Confederation of 1815 was, i. e., a league of princes. It is a state established by, and composed of, states.[3]

[1] See p. 285.

[2] P. Laband, Das Staatsrecht des deutschen Reiches, I., 91.

[3] On the more purely juristic aspects of the Empire the best work in English is Howard, The German Empire (Chap. 2, on "The Empire and the Individual States"). A very useful volume covering the governments of Empire and states is Combes de Lestrade, Les monarchies de l'Empire allemand (Paris, 1904). The monumental German treatise is P. Laband, Das Staatsrecht des deutschen Reiches (4th ed., Tübingen, 1901), in four volumes. There is a six-volume French translation of this work, Le droit public de L'Empire allemand (Paris, 1900–1904). Other German works of value are: O. Mayer, Deutsches Verwaltungsrecht (Leipzig, 1895–1896); P. Zorn, Das Staatsrecht des deutschen Reiches (2d ed., Berlin, 1895–1897); and A. Arndt, Das Staatsrecht des deutschen Reiches (Berlin, 1901). There is a four-volume French translation of Mayer's important work, under the title Le droit administratif allemand (Paris, 1903–1906). Two excellent brief German treatises are: P. Laband, Deutsches Reichsstaatsrecht (3d ed., Tübingen, 1907), and Hue de Grais, Handbuch der Verfassung und Verwaltung in Preussen und dem deutschen Reiche (18th ed., Berlin, 1907). The most recent work upon the subject is F. Fleiner, Institutionen des deutschen Verwaltungsrechts (Tübingen, 1911). A suggestive monograph is J. du Buy, Two Aspects of the German Constitution (New Haven, 1894).

## IV. The Empire and the States

**214. Sovereignty and the Division of Powers.**—The Germans are not themselves altogether agreed concerning the nature and precise location of sovereignty within the Empire, but it is reasonably clear that sovereignty, in the ultimate meaning of that much misused term, is vested in the government of the Empire, and not in that of any state. The embodiment of that sovereignty, as will appear subsequently, is not the national parliament, nor yet the Emperor, but the Bundesrath, which represents the "totality" of the affiliated governments.[1] As in the United States, Switzerland, and federal nations generally, there is a division of powers of government between the central governmental establishment and the states. The powers of the Imperial government, it is important to observe, are specifically enumerated; those of the states are residual. It is within the competence of the Imperial government to bring about an enlargement of the powers that have been confided to it; but until it does so in any particular direction the power of the state governments in that direction is unlimited. On the one hand, there is a considerable field of legislative activity—in respect to citizenship, tariffs, weights, measures, coinage, patents, military and naval establishment of the Empire, etc.—in which the Empire, by virtue of constitutional stipulation, possesses exclusive power to act.[2] On the other, there is a no less extensive domain reserved entirely to the states—the determination of their own forms of government, of laws of succession, of relations of church and state, of questions pertaining to their internal administration; the framing of their own budgets, police regulations, highway laws and laws relating to land tenure; the control of public instruction. Between lies a broad and shifting area, which each may enter, but within which the Imperial authority, in so far as is warranted by the constitution, must be accorded precedence over the authority of a state. "The matters over which the states preserve control," says a great German jurist, "cannot be separated completely from those to which extends the competence of the Empire. The various powers of government are intimately related the one to another. They run together and at the same time impose mutual checks in so many ways, and are so interlaced, that one cannot hope to set them off by a line of demarcation, or to set up among them a Chinese wall of division. In

[1] Howard, German Empire, 21.

[2] Matters placed under the supervision of the Empire and made subject to Imperial legislation are enumerated in the sixteen sections of Article 4 of the constitution. Dodd, Modern Constitutions, I., 327–328.

every sphere of their activity the states encounter a superior power to which they are obliged to submit. They are free to move only in the circle which Imperial law-making leaves open to them. That circle does exist. It is delimited, but not wholly occupied, by the Empire. . . . In a certain sense it may be said that it is only by sufferance of the Empire that the states maintain their political rights at all, and that, at best, their tenure is precarious." [1]

In passing, it may be observed that there is, in fact, a distinct tendency toward the reduction of the spheres of authority which formerly were left to the states. One of the means by which this has been brought about is the establishment of uniform codes of law throughout the Empire, containing regulations respecting a multitude of things which otherwise would have been regulated by the states alone. Most important among these is the great Civil Code, which went into effect January 1, 1900. Another means to the same end is the increase in recent years of Imperial legislation relating to workingmen's insurance, factory regulations, industrial conditions, and other matters of a social and economic nature. Not infrequently in recent times have the states, or some of them, raised protest against this centralizing tendency, and especially against the "Prussianization" of the Empire which it seems clearly to involve. In many states, especially those to the south of the Main, the separatist tradition is still very strong. In Bavaria, more than anywhere else, is this true, and in 1903 the new Bavarian premier, Baron Podevils, was able to arouse genuine enthusiasm for his government by a solemn declaration before the diet that he and his colleagues would combat with all their might "any attempt to shape the future of the Empire on lines other than the federative basis laid down in the Imperial constitution."

**215. The Interlacing of Governmental Agencies.**—The functions of a legislative character which are delegated to the Imperial government are numerous and comprehensive, and in practice they tend all the while to be increased. Those of an executive and judicial character are very much more restricted. In respect to foreign relations, the navy, and the postal and telegraph service, administration is absolutely centralized in the organs of the Empire; in respect to everything else, administrative functions are performed entirely, or almost entirely, through the agency of the states. In the United States the federal government is essentially complete within itself. It has its own law-makers, administrators, and judges, who carry on the national government largely independently of the governing agencies

[1] Laband, Das Staatsrecht des deutschen Reiches (2d ed.), I., 102–103.

of the various states. In Germany, where the state occupies in some respects a loftier position in the federation than does its counterpart in America, the central government, in respect to all save the fields that have been mentioned, relies for the execution of its measures upon the officials of the states. The Empire establishes taxes and customs duties, but the imposts are collected by state authorities. Similarly, justice is rendered, not in the name of the Empire, but in the name of the state, and by judges in the employ of the state. In respect to machinery, the Imperial government is, therefore, but a part of a government. Alone, it could not be made to operate. It lacks a judiciary; likewise the larger portion of the administrative agencies without which mere powers of legislative enactment are futile. To put the matter succinctly, the working government of the Empire comprises far more than the organs and functions that are purely Imperial; it comprises the federal organs and functions possessed by the individual states as well.[1]

**216. The States: the Prussian Hegemony.**—Legally, the union of the German states is indestructible. The Imperial government is vested with no power to expel a state, to unite it with another state, to divide it, or in any way to alter its status in the federation. On the other hand, no state possesses a right to secede, or to modify its powers or obligations within the Empire. If a state violates its obligations or refuses to be bound by the authority of the Empire, the federal army, on decision of the Bundesrath, may be mobilized by the Emperor against it.[2]

Among the states, however, there is a glaring lack of equality of status and privilege. When the Empire was formed the component states differed widely in area, population, and traditional rights, and there was no attempt to reduce them to a footing that should be absolutely uniform. Prussia, besides comprising the moving spirit in the new affiliation, contained a population considerably in excess of that of the other twenty-four states combined. The consequence was that Prussia became inevitably the preponderating power in the Empire. The king of Prussia is *ex-officio* German Emperor; the Prussian votes in the Bundesrath can defeat any proposed amendment of the constitution, and likewise any measure looking toward a change in the army, the navy, or the taxes; and Prussia controls the chairmanship of all standing committees in the Bundesrath.[3]

[1] Laband, Das Staatsrecht des deutschen Reiches, § 7–10; Lebon, Études sur l'Allemagne politique, 93–104.

[2] Art. 19. Dodd, Modern Constitutions, I., 332.

[3] A. Lebon, La constitution allemande et l'hégémoine prussienne, in *Annales de l'École Libre des Sciences Politiques*, Jan., 1887.

**217. Military Arrangements.**—Other privileges Prussia possesses by virtue, not of the constitution, but of agreements with her sister states. The most important of these relates to the army. By the constitution it was provided at the outset that the armed forces of the Empire should be organized into a single establishment, to be governed by Imperial law and to be under the supreme command of the Emperor.[1] In respect to the appointment of minor officers, and some other matters, powers of jurisdiction were left, however, to the individual states. These powers were in themselves worth little, and in the course of time all of the states save Bavaria, Saxony, and Württemberg were brought to the point of yielding to Prussia the slender military authority that remained to them.[2] In this manner Prussia acquired the right to recruit, drill, and officer the contingents of twenty-one states—a right which appreciably increased her already preponderant authority in all matters of a military character. Technically, there is no *German* army, just as there is no *German* minister of war. Each state maintains its own contingent, and the contingent maintained by the state is stationed normally within that state. By virtue of the treaties, however, all contingents save those of Bavaria, Saxony, and Württemburg are administered precisely as if they comprised integral parts of the Prussian establishment.[3]

**218. The Sonderrechte.**—In the possession of special privileges Prussia, however, is not alone. When the states of the south became members of the federation all of them stipulated certain *Sonderrechte*, or reserved rights, whose acknowledgment was made the condition upon which they came into the union. Württemberg and Bavaria, for example, retain on this basis the administration of posts and telegraphs within their boundaries, and Württemberg, Bavaria, and Baden possess the exclusive right to tax beers and brandies produced within each state respectively. Bavaria retains the administration of her own railways. At one time it was feared that the special privileges accorded the southern states would constitute a menace to the stability of the Empire. Such apprehension, however, has proved largely groundless.[4] In this connection it is worth pointing out that under the Imperial constitution the right to commission and despatch diplomatic (though not consular) agents is not withdrawn from the individual states. In most instances, however, the maintenance of diplomatic representatives

[1] Arts. 61, 63, 64. Dodd, Modern Constitutions, I., 345–347.

[2] The first of the Prussian military treaties, that concluded with Saxe-Coburg-Gotha, dates from 1861; the last, that with Brunswick, from 1885.

[3] Howard, The German Empire, Chap. 12; Laband, Das Staatsrecht des deutschen Reiches, §§ 95–113; C. Morhain, De l'empire allemand (Paris, 1886), Chap. 15.

[4] Laband, Das Staatsrecht des deutschen Reiches, §§ 11–13.

abroad has long since been discontinued. Saxony, Bavaria, and Württemberg retain to-day only their posts at Vienna, St. Petersburg, and the Vatican.

**219. Constitutional Amendment.**—It is stipulated within the Imperial constitution that amendments may be adopted by a process identical with that of ordinary legislative enactment, save that an amendment against which as many as fourteen votes are cast in the Bundesrath is to be considered rejected. The practical operation of this last-mentioned provision is to confer upon Prussia, possessing seventeen votes and controlling twenty in the federal chamber, an absolute veto upon all propositions looking toward constitutional change. Clauses of the constitution whereby special rights are secured to particular states may be amended only with the consent of the states affected.[1] In 1873, 1888, and 1893 the text of the constitution was amended, and upon several other occasions important modifications have been introduced in the working constitution without the formality of altering the letter of the instrument.

[1] Art. 78. Dodd, Modern Constitutions, I., 351.

# CHAPTER X

## THE IMPERIAL GOVERNMENT: EMPEROR, CHANCELLOR, AND BUNDESRATH

### I. The Emperor

**220. Status and Privileges.**—Under the North German Confederation of 1867–1871 the king of Prussia was vested with supreme command of the federal navy, the functions of Bundesfeldherr, or commander-in-chief of the federal army, and a large group of purely governmental powers, including the summoning, proroguing, and adjourning of the Bundesrath and Bundestag, the appointment and dismissal of the Chancellor and of other federal officials, the publication of the federal laws, and a general supervision of the federal administration. These powers were exercised by the king in the capacity of *Bundespræsidium*, or chief magistrate, of the federation. Upon the accession of the south German states in 1870–1871 Bismarck and his royal master determined to bring once more into use in Germany the title of Emperor, although between the empire which was now assuming form and the empire which had been terminated in 1806 there was recognized to be no historical connection. The constitution of April 16, 1871, accordingly stipulates that "to the king of Prussia shall belong the presidency of the Confederation, and he shall bear the title of *Deutscher Kaiser* (German Emperor)." [1]

The revival of the Imperial title and dignity involved, and was intended to involve, no modification of the status of the Bundespræsident, save in respect to his official designation and certain of his personal privileges. His relations with the states and with the princes of the federation continued precisely as before. The powers of the Kaiser were, and are, the powers of the old President, and nothing in excess of those. The title might be taken to imply a monarchy of the customary sort; but properly it does not. There is no Imperial crown, no Imperial civil list, no Imperial "office" as such. The king of Prussia, in addition to his purely Prussian prerogatives, is by the Imperial con-

[1] Art. 11. Dodd, Modern Constitutions, I., 330. It will be observed that the title is not "Emperor of Germany." The phrase selected was intended to denote that the Emperor is only *primus inter pares* in a confederation of territorial sovereigns (*Landesherren.*) He is a territorial sovereign only in Prussia.

stitution vested with the added prerogative of bearing the Kaiser title and of exercising those powers which under the constitution and laws are conferred upon the bearer of that title. Apart from the Prussian crown the Imperial function does not exist; from which it follows that there is no law of Imperial succession apart from the Prussian law regulating the tenure of the Prussian throne,[1] and that in the event of a regency in Prussia the regent would, *ipso facto*, exercise the functions of Emperor. Chief among the privileges which belong to the Kaiser as such are those of special protection of person and family and of absolute exemption from legal process. Responsible to no superior earthly authority, the Emperor may not be brought for trial before any tribunal, nor be removed from office by any judicial proceeding. Assaults upon his person are punishable with death, and attacks, in speech or writing, which are adjudged to constitute *lèse majesté* are subject to special and severe penalties.[2]

**221. Powers: Military and Foreign Affairs.** The king of Prussia being *ipso facto* Emperor, the royal and Imperial functions which are combined in the hands of the one sovereign are of necessity closely inter-related. There are powers which belong to William II. to-day solely by virtue of his position as king of Prussia. There are others, of an Imperial nature, which he possesses by reason of the fact that, being king of Prussia, he is also Emperor. In practice, if not in law, there are still others which arise from the thoroughgoing preponderance of the Prussian kingdom as a state within the Empire—the power, in general, of imparting a bent to Imperial policy such as would not be possible if, for example, the king of Württemberg were Emperor, rather than the king of Prussia.

The functions of the Emperor as such are not numerous, but, so far as they go, they are of fundamental importance. In the first place, the Emperor is commander-in-chief of the army and navy. He may control the organization of the Landwehr, or national defense; determine the strength and composition of the armed contingents; supervise the equipment and drilling of the troops; and mobilize the whole, or any part, of the forces.[3] A second group of Imperial functions are those relating to foreign affairs. "It shall be the duty of the Emperor," says the constitution, "to represent the Empire among nations, to declare war and to conclude peace in the name of the Empire, to enter into alliances and other treaties with foreign countries, to accredit

[1] Arts. 53–58 of the Prussian Constitution. See p. 253.

[2] R. C. Brooks, Lèse Majesté, in *The Bookman*, June, 1904.

[3] Howard, The German Empire, Chap. 12; Laband, Deutsches Reichsstaatsrecht, 345–359.

ambassadors and to receive them."[1] The Emperor's power, however, is not in all of these directions absolute. One important limitation arises from the requirement that, under all circumstances save in the event of an attack upon the federal territory or its coasts, war may be declared only with the consent of the Bundesrath. Another is that in so far as treaties with foreign countries relate to matters which are to be regulated by Imperial legislation, "the consent of the Bundesrath shall be required for their conclusion, and the approval of the Reichstag shall be necessary to render them valid."[2]

**222. Powers: Legislation and Justice.**—A third group of functions has to do with legislation. By the constitution the Emperor is vested with the right to convene the Bundesrath and the Reichstag, and to open, adjourn, and close them.[3] In accordance with resolutions of the Bundesrath, bills are laid before the Reichstag in the name of the Emperor; and it is the Emperor's duty to prepare and publish the laws of the Empire, as well as to supervise their execution.[4] In so far as is permitted by the constitution, and by laws from time to time enacted, decrees and ordinances may be promulgated by the Emperor, under the countersignature of the Chancellor. Speaking strictly, the Emperor possesses no veto upon measures passed in the Bundesrath and Reichstag, though in practice he may refuse to publish a law in the enactment of which he believes the ordinary formal requirements not to have been complied with. He may not withhold a measure by reason simply of its content.

The Emperor is vested, in the next place, with certain prerogatives in relation to the judiciary. On motion of the Bundesrath, he appoints (though he may not remove) the members of the Reichsgericht, or Imperial Court; and by the Code of Criminal Procedure it is stipulated that in cases in which the Imperial Court shall have rendered judgment as a tribunal of first instance, the Emperor shall possess the power of pardon. The pardoning power is extended likewise to cases adjudged in consular courts, prize courts, and other tribunals specified by law.

**223. Powers: Execution of the Law.**—Finally, the execution of the laws is intrusted to the Emperor with, however, this limitation, that, under the German system, the execution of law is committed largely

[1] Art. 11. Dodd, Modern Constitutions, I., 330.

[2] Art. 11, clause 3. Dodd, I., 331.

[3] Art. 12. Ibid.

[4] "The laws of the Empire shall receive their binding force by Imperial promulgation, through the medium of an Imperial Gazette. If no other time is designated for the published law to take effect it shall become effective on the fourteenth day after its publication in the Imperial Gazette at Berlin." Art. 2. Dodd, Modern Constitutions, I., 326.

to the states and the officials thereof, so that the measures of the Imperial Government whose execution is not specifically provided for by the constitution and the laws are presumably carried into effect by the constituted authorities of the states. There are, however, Imperial agents whose business it is to inspect the execution of Imperial measures by the states and to report to the Emperor infractions or omissions. When such delinquencies are adjudged sufficiently serious, the Emperor may bring them to the attention of the Bundesrath, and that body may order an "execution," i. e., a show of military force to coerce the erring state. The carrying out of the "execution" is intrusted to the Emperor.[1] Incident to the general executive function is the power to make appointments. By the constitution it is stipulated that the Emperor, in addition to appointing the Imperial Chancellor, shall appoint Imperial officials, require of them the taking of an oath to the Empire, and, when necessary, dismiss them.[2] The position which the Chancellor occupies in the Imperial administrative system is of such weight that the power of appointing to, and of removing from, the chancellorship is in itself of very large importance; and the Kaiser's control of administration is still further increased by his power of appointment and removal of subordinate officials.[3]

## II. The Chancellor

**224. Non-existence of a Parliamentary System.**—Within the domain of Imperial government the place filled in other governmental systems by a ministry or cabinet of some variety is occupied by a single official, the *Reichskanzler*, or Chancellor. When the Imperial constitution was framed it was the intention of Bismarck to impart to the Imperial administration the fullest facility and harmony by providing the Chancellor with no colleagues, and by making that official responsible solely to the Emperor. Such a scheme would have meant, obviously, a thoroughgoing centralization in all Imperial affairs and the utter negation of anything in the way of a parliamentary system of government. The more liberal members of the constituent Reichstag

[1] Art. 19. Dodd, Modern Constitutions, I., 332.

[2] Art. 18. Ibid.

[3] Art. 19. Dodd, Modern Constitutions, I., 332. On the status and functions of the German Emperor see Howard, The German Empire, Chap. 3; J. W. Burgess, The German Emperor, in *Political Science Quarterly*, June, 1888; Laband, Das Staatsrecht des deutschen Reiches, §§ 24–26; ibid., Das deutsche Kaiserthum (Strassburg, 1896); R. Fischer, Das Recht des deutschen Kaisers (Berlin, 1895); K. Binding, Die rechtliche Stellung des Kaisers (Dresden, 1898); R. Steinbach, Die rechtliche Stellung des deutschen Kaisers verglichen mit des Präsidenten der Vereinigten Staaten von Amerika (Leipzig, 1903).

compelled a modification of the original Bismarckian programme; so that when the constitution assumed its permanent form it contained not merely the stipulation that "the Imperial Chancellor, to be appointed by the Emperor, shall preside in the Bundesrath and supervise the conduct of its business," but the significant provision that "the decrees and ordinances of the Emperor shall be issued in the name of the Empire, and shall require for their validity the counter-signature of the Imperial Chancellor, who thereby assumes the responsibility for them."[1]

Nominally, this article establishes the principle of ministerial responsibility, even though there is but a single minister to be made responsible. Practically, it does nothing of the sort, for the reason that no machinery whatever is provided for the enforcing of responsibility. There is not even specification of the authority to which responsibility shall lie. The article stipulating responsibility, appropriated from the constitution of Prussia, was merely tacked on the Imperial instrument and has never been brought into organic relation with it. In practice the Imperial Government has always been able to do business without for a moment admitting the right of the Reichstag to unseat the Chancellor by an adverse vote. The Chancellor may be criticised and the proposals which he introduces may be defeated; expediency may even require his removal by his Imperial master; but he has never felt obliged to retire merely by reason of lack of support in the legislative chamber, as would a British or a French minister similarly situated. This does not mean, of course, that the blocking of a governmental programme may not tend to produce the practical effect of a parliamentary vote of "want of confidence." It means simply that the Chancellor, in such a case, is under no admitted obligation to resign. The retirement of Chancellor von Bülow during the crisis of 1908–1909 was more nearly involuntary than that of any one of his three predecessors, but persons most conversant with the circumstances agree that there was involved in it no intention of concession to the parliamentary principle. The Chancellor's fall was, in reality, only his punishment for countenancing the popular indignation occasioned by the Emperor's memorable *Daily Telegraph* interview, for which the Chancellor himself had been, at least technically, responsible.[2]

[1] Arts. 15 and 17. Dodd, Modern Constitutions, I., 331.

[2] For an excellent discussion of this general subject see W. J. Shepard, Tendencies toward Ministerial Responsibility in Germany, in *American Political Science Review*, Feb., 1911. In the course of an impassioned speech in the Reichstag in 1912, occasioned by a storm of protest against the Emperor's alleged threat to withdraw the newly granted constitution of Alsace-Lorraine, Chancellor von Bethmann-Hollweg stated the theory and fact of the office which he holds in these sentences: "No situation has been created for which I cannot take the responsi-

There is a clause of the constitution[1] which confers upon the Chancellor the right to delegate the power to represent him to *any other* member of the Bundesrath; whence it seems to follow that the Chancellor must be himself a member of that body. The relations of the Empire and the Prussian kingdom practically require, further, that the Chancellor be identified with the Prussian contingent in the federal chamber. Since, however, the Emperor, in his capacity of king of Prussia, designates the Prussian delegates in that body, it is open to him to make such an appointment in this second capacity as will enable him when selecting, in his Imperial capacity, a chancellor to procure the services of the man he wants.

**225. Functions: in the Bundesrath and the Reichstag.**—Speaking broadly, the functions of the Chancellor are two-fold. The first arises from his position within the Bundesrath. Not only does he represent in that body, as do his Prussian colleagues, the king of Prussia; he is vested constitutionally with the presidency of it and with the supervision of its business. He determines the dates of its sessions. Through his hands pass all communications and proposals, from the states as well as from the Reichstag, addressed to it, and he is its representative in all of its external relations. In the name of the Emperor he lays before the Reichstag all measures enacted by the Bundesrath; and as a member of the Bundesrath, though not as Imperial Chancellor, he may appear on the floor of the Reichstag to advocate and explain proposed legislation. Measures which have been enacted into law are binding only after they have been proclaimed by the Chancellor, such proclamation being made regularly through the official organ known as the *Reichsgesetzblatt*.

**226. Functions: Administration.**—A second function, so inextricably intertwined with those just mentioned as to be in practice sometimes not clearly distinguishable from them, is that which arises from the Chancellor's position as the principal administrative official of the Empire. As has been pointed out, the work of administration under the German system is largely decentralized, being left to the states; but the ultimate administrative *authority* is very highly centralized, being gathered in the hands of the Chancellor in a measure not paralleled in any other nation of western Europe. As an administrative official the Chancellor has been described with aptness as the Emperor's "other self." He is appointed by the Emperor; he may be

bility. As long as I stand in this place I shield the Emperor (*trete ich vor den Kaiser*). This not for courtiers' considerations, of which I know nothing, but as in duty bound. When I cannot satisfy this my duty you will see me no more in this place."

[1] Art. 15, cl. 2. Dodd, Modern Constitutions, I., 331.

dismissed by him; he performs his functions solely as agent and assistant of the Emperor; and, although according to the letter of the constitution responsible to the Reichstag, he is, in practice, responsible to no one save his Imperial master.

Prior to 1870 the administrative functions of the Confederation were vested in a single department, the *Bundeskanzleramt*, or Federal Chancery, which was organized in three sections—the "central office," the postal office, and the bureau of telegraphs. For the time being, affairs pertaining to the army, the navy, and foreign relations were confided to the care of the appropriate ministries of Prussia. In 1870 there was created a separate federal department of foreign affairs, and in the following year a federal department of the marine. One by one other departments were established, until in 1879 the process was completed by the conversion of what remained of the Bundeskanzleramt into a department of the interior. The status of these departments, however, was from the outset totally unlike that of the corresponding branches of most governments. They were, and are, in effect but bureaus of the Imperial Chancellery, and their heads comprise in no degree a collegiate ministry or cabinet. Each official in charge of a department owes his position absolutely to the Chancellor, and is responsible, not to the Reichstag, nor yet to the Emperor directly, but to the Chancellor. Some of the more important officials bear the title of "secretary of state," but in any case they are legally nothing more than expert and essentially non-political functionaries of the administrative hierarchy, answerable to the Chancellor for all that they may do.[1] Of the principal departments there are at present seven: the Foreign Office, the Colonial Office, the Imperial Home Office, the Department of Justice, the Imperial Treasury, the Imperial Admiralty, and the Imperial Post-Office. In the nature of things some are more important than others; and in addition to them there are several Imperial bureaus, notably those of Railways, the Bank, and the Debt Commission. Throughout all branches of the Imperial administrative service appointments and dismissals are made regularly by the Chancellor, in the name of the Emperor, and by the same authority all administrative regulations are promulgated.[2]

**227. Delegation of Powers.**—There are two arrangements in ac-

[1] At the same time it is to be observed that, in practice, the more important state secretaries are apt to sustain a relation with the other organs of government which is somewhat closer than might be inferred from what has been said. Not infrequently they sit in the Bundesrath, and are by reason of that fact privileged to defend their measures in person on the floor of the Reichstag. Not infrequently, too, they are members of the Prussian ministry.

[2] Laband, Das Staatsrecht des deutschen Reiches, §§ 41, 64–66.

cordance with which it is possible for the functions of the Chancellor to be vested in a substitute. By the constitution the Chancellor is authorized, as has been observed, to delegate to any other member of the Bundesrath the power of representing him in that body; and there is a special agreement to the effect that, in such a contingency, should no acceptable Prussian substitute be available, the choice shall fall on a Bavarian. In the second place, under statute of March 17, 1878, the Chancellor is empowered to call for the appointment of a substitute, or substitutes, in his capacity of Imperial minister. The appointment in such a case is made, not by the Chancellor himself, but by the Emperor, and there may be designated either a general substitute (*Generalstellvertreter*) or a substitute for the discharge of the Chancellor's functions in some particular department (*Specialstellvertreter*).[1] In the one case there is no limit upon the Emperor's freedom of choice; in the other, appointments must be made from chiefs of the department or departments affected. The Chancellor may at any time resume functions thus delegated.[2]

## III. The Bundesrath

If the chancellorship is without a counterpart among modern governments, no less so is the Federal Council, or Bundesrath. No feature of the German political system is more extraordinary; none, as one writer has observed, is more thoroughly native.[3] It is not an "upper house," nor even, in the ordinary sense, a deliberative chamber at all. On the contrary, it is the central institution of the whole Imperial system, and as such it is possessed of a broad combination of functions which are not only legislative, but administrative, consultative, judicial, and diplomatic.

**228. Composition: the Allotment of Votes.**—The Bundesrath is composed of delegates appointed by the princes of the monarchical states and by the senates of the free cities. In the Imperial constitution it is required that the fifty-eight votes to which the twenty-five

[1] The law of 1878 was enacted on the occasion of Bismarck's prolonged absence from Berlin, during his retirement at Varzin. A *Generalstellvertreter* takes the title of *Reichsvicekanzler*, or Imperial Vice-Chancellor.

[2] On the status and functions of the Chancellor see Howard, The German Empire, Chap. 7; Laband, Das Staatsrecht des deutschen Reiches, § 40; L. Dupriez, Les ministres dans les principaux pays d'Europe et d'Amérique, 2 vols. (Paris, 1892), I., 483–548; Hensel, Die stellung des Reichskanzlers nach dem Staatsrechte des deutschen Reiches, in Hirth, *Annalen des deutschen Reiches*, 1882; M. I. Tambaro, La transformation des pouvoirs en Allemagne, in *Revue du Droit Public*, July-Sept., 1910.

[3] Lowell, Governments and Parties, I., 259.

states of the confederation are entitled shall be distributed in such a manner that Prussia shall have seventeen, Bavaria six, Saxony four, Württemberg four, Baden three, Hesse three, Mecklenberg-Schwerin two, Brunswick two, and the seventeen other states one apiece.[1] Save for the increase of the Bavarian quota from four to six and of the Prussian from four to seventeen, these numbers were simply carried over from the Diet of the Confederation of 1815. The Prussian increase arose, in 1866, from the absorption of Hanover, Hesse Cassel, Holstein-Lauenburg, Nassau, and Frankfort; the Bavarian, from a customs union treaty of July 8, 1867. Subsequent to the adoption of the constitution of 1871 Prussia acquired, by contract, the vote of the government of Waldeck; also, through the establishment in 1884–1885 of a perpetual Prussian regency in Brunswick, the two votes to which that state is entitled; so that the total of the votes controlled by the government of Prussia has been raised, for all practical purposes, to twenty.

It may be observed that the allocation of votes for which provision was made in the constitution of 1867–1871 was largely arbitrary. That is to say, except for the quotas of Prussia and Bavaria, it was perpetuated from the constitution of 1815 with no attempt to apportion voting power among the several states in exact relation to population, wealth, or importance. Upon any one of these bases Prussia must have been accorded an absolute majority of the aggregate number, rather than a scant third. In 1867 the population of Prussia comprised four-fifths of that of the North German Confederation; in 1871, two-thirds of that of the Empire. That Prussia should intrust to her sister states a total of forty-one votes, retaining but seventeen for herself, was one of the arrangements by which Bismarck sought to assure the lesser members of the federation against too complete domination on the part of the Prussian kingdom.

**229. Status of Delegates and Method of Voting.**—Each state is authorized, though not required, to send to the Bundesrath a number of delegates identical with the number of votes to which the state is entitled. The full quota of members is, therefore (since the Alsace-Lorraine Constitution Act of 1911), sixty-one. Legally, and to a large extent practically, the status of the delegate is that, not of a senator,

[1] Under the Alsace-Lorraine Constitution Act of 1911 (see p. 285), comprising for all practical purposes an amendment of the Imperial constitution, the territory of Alsace-Lorraine has become nominally a state of the Empire, being accorded three votes in the Bundesrath. The whole number of votes was thus raised to sixty-one. The Alsatian delegates are appointed by the Statthalter, who is the immediate and responsible agent of the Emperor. Their votes are cast, however, under regulations which are inconsistent with full-fledged statehood.

but of a diplomat; and the Emperor is required to extend to the members of the body the "customary diplomatic protection." [1] Delegates are very commonly officials, frequently ministers, of the states which they represent. They are appointed afresh for each session, and they may be recalled or replaced at any time. The purely federal character of the Bundesrath is further emphasized by two principal facts. The members speak and act and vote regularly, not at their own discretion, but under the specific instructions of the governing authorities by whom they are accredited. Only rarely do their instructions allow to them any considerable measure of independence. Strictly, the Bundesrath is not a deliberative assembly at all; though, unlike the former Diet, it is something more than a meeting of ambassadors of the states. In the second place, the votes cast are the votes, not of the individual members, but of the states, and they are cast in indivisible blocks by the delegations of the states, regardless of the number of members in attendance. Thus, Bavaria is entitled to six votes. Whatever the individual opinions of the six Bavarian delegates, the six Bavarian votes are cast solidly upon any question that may arise. It is not even necessary that six delegates actually participate in the decision. A single delegate may cast the entire quota of votes to which his state is entitled. The twenty votes controlled by Prussia are therefore cast invariably in a block, from which it follows that Prussia usually preponderates in the chamber. On several occasions the smaller states have been able to combine in sufficient numbers to defeat a project upon which Prussia was bent, but such a proceeding is distinctly exceptional.

**230. Sessions and Procedure.**—The Bundesrath may be convened by the Emperor, which in effect means by the Chancellor, at any time. The constitution stipulates that there shall be at least one session a year, and, furthermore, that it shall be obligatory upon the Emperor to convene the body whenever a meeting is demanded by one-third of the total number of votes. The Bundesrath may be called together "for the preparation of business" without the Reichstag; but the Reichstag may not be convened without the Bundesrath.[2] The presiding officer at all sessions is the Chancellor, or some other member of the body by him designated as a substitute. It is within the competence of each member of the confederation, i. e., each state, to propose measures and to introduce motions. The phraseology of the constitution debars the Emperor, as Emperor, from introducing proposals. As king of Prussia, however, he may bring forward any

[1] Art. 10. Dodd, Modern Constitutions, I., 330.
[2] Arts. 13 and 14. Dodd, Modern Constitutions, I., 331.

project through the medium of the Prussian delegation; and in actual practice it has not always been deemed necessary to resort to this subterfuge.

From all sittings of the Bundesrath the public is rigorously excluded; and although ordinarily upon the conclusion of a session a statement regarding the results of the proceedings is given to the press, the chamber may vote to withhold such information altogether. Business left unfinished at the close of a session may be resumed upon the reassembling, precisely as if no lapse of time had occurred. With some exceptions, a simple majority of the sixty-one votes is adequate for the adoption of a measure. In the event of a tie, the Prussian delegation possesses the deciding voice. The principal limitations upon decisions by simple majority are: (1) any proposal to amend the constitution may be rejected by as few as fourteen votes, whence it arises that Prussia has an absolute veto on amendments; and (2) when there is a division upon proposed legislation relating to military affairs, the navy, the tariff, and various consumption taxes, the vote of Prussia prevails if it is cast in favor of maintaining the *status quo*.[1]

**231. Committees.**—The work of the Bundesrath consists largely in the preparation of measures for the consideration of the Reichstag, and a goodly share of its labor is performed in committees. Of permanent committees there are now twelve—eight provided for within the constitution itself and four existing by virtue of standing orders. The committees prescribed by the constitution are those on the army and fortifications; marine; customs and taxes; commerce; railroads, posts and telegraphs; judicial affairs; accounts; and foreign relations. Under certain limitations, each of these committees, constituted for one year, is chosen by the Bundesrath itself, by secret ballot, except that the Emperor appoints the members of the committee on the marine and all but one of the members of the committee on the army and fortifications.[2] The committees existing by virtue of standing orders are those on Alsace-Lorraine, railroad freight rates, standing orders, and the constitution. All committees consist of seven members, save those on foreign affairs and the marine, which have five; and each includes representatives of at least four states. Prussia holds all chairmanships, save that of the committee on foreign affairs, which belongs to Bavaria.

[1] Art. 5. Dodd, Modern Constitutions, I., 328.

[2] Art. 8. Ibid., I., 330. Strictly, the Bundesrath but indicates by ballot the states which shall be represented on each committee, leaving to the states themselves the right to name their representatives.

**232. Powers of Legislation.**—By reason of the pivotal position which the Bundesrath occupies in the German constitutional system the functions of the body are fundamental and its powers comprehensive. Its competence is in the main legislative and fiscal, but also in part executive and judicial. By the constitution it is stipulated that the legislative power of the Empire shall be exercised by the Bundesrath and the Reichstag, and that a majority of the votes of both bodies shall be necessary and sufficient for the enactment of a law.[1] The right of initiating legislation is expressly conferred upon the Reichstag, but in practice it is exercised almost exclusively by the Bundesrath. Even finance bills all but invariably originate in the superior chamber. Under the normal procedure bills are prepared, discussed, and voted in the Bundesrath, submitted to the Reichstag for consideration and acceptance, and returned for further scrutiny by the Bundesrath before their promulgation by the Emperor. In any case, the final approval of a measure must take place in the Bundesrath, by whose authority alone the character of law can be imparted. Speaking strictly, it is the Bundesrath that makes law, with merely the assent of the Reichstag.

**233. Executive Authority.**—The Bundesrath's executive functions represent a curious admixture, but the sum total is very considerable. In the first place, the body possesses supplementary administrative powers. By the constitution it is required to take action upon "the general administrative provisions and arrangements necessary for the execution of the Imperial laws, so far as no other provision is made by law," as well as upon "the defects which may be discovered in the execution of the Imperial laws."[2] This function is performed through the issuing of ordinances so devised as not to contravene the constitution, existing law, or the proper prerogatives of any constituted authority, Imperial or state. In the second place, certain powers vested in the Emperor may be exercised only with the Bundesrath's consent. Most important of these are: (1) the declaration of war, save in the event of an attack upon the territory or coasts of the Empire; (2) the concluding of treaties, in so far as they relate to matters falling within the range of Imperial legislation; and (3) the carrying out of an "execution" against a delinquent state. Finally certain relations are maintained with the Reichstag which involve the exercise of authority that is essentially executive. With the assent of the Emperor, the Bundesrath may dissolve the popular chamber; and every member of the Bundesrath has the right to ap-

[1] Art. 5. Dodd, Modern Constitutions, I., 328.
[2] Art. 7. Dodd, I., 329.

pear in the Reichstag and to be heard there at any time upon his own request, somewhat after the manner of a minister in a parliamentary government.[1] Large functions in connection with public finance, likewise, are vested in the body. By it the annual budget is prepared, the accounts which the Empire carries with the states are audited, and important supervisory relations with the Imperial Bank, the Imperial Debt Commission, and other fiscal agencies, are maintained. Lastly, there is some participation in the power of appointment; for although that power, as such, is vested in the Emperor, officials of some kinds (e. g., judges of the Imperial Court) are actually chosen by the Bundesrath, and in many other instances the body preserves an acknowledged right to approve appointments which are made.

**234. Judicial Powers.**—In its judicial capacity the Bundesrath sits as a supreme court of appeal, to which cases may be carried from the tribunals of a state, when it can be shown that justice is not to be had in those tribunals.[2] It serves also as a court of last resort for the settlement of disputes between the Imperial Government and a state; or between two states, when the point at issue is not a matter of private law and when a definite request for action is made by one of the parties. Finally, in disputes relating to constitutional questions in states whose constitution does not designate an authority for the settlement of such differences, the Bundesrath is required, at the request of one of the parties, to effect an amicable adjustment; or, if this shall prove impossible, to see to it that the issue is settled by Imperial law.[3]

[1] Arts. 9 and 24. Dodd, Modern Constitutions, I., 330–333. It should be observed, however, that the members of the Bundesrath are authorized to appear in the Reichstag, not for the purpose of advocating a measure which the Bundesrath has enacted, or would be willing to enact, but simply to voice the interests or demands of their own states.

[2] Art. 77. Dodd, Modern Constitutions, I., 350.

[3] Art. 76. Dodd, Modern Constitutions, I., 350. On the Bundesrath see Howard, The German Empire, Chap. 4; J. H. Robinson, The German Bundesrath, in *Publications of University of Pennsylvania*, III. (Philadelphia, 1891); P. Laband, Das Staatsrecht des deutschen Reiches, §§ 27–31; A. Lebon, Études sur l'Allemagne politique, 137–151; Dupriez, Les Ministres, I., 505–523; Zorn, Das Staatsrecht des deutschen Reiches, I., 136–160; E. Kliemke, Die Staatsrechtliche Natur und Stellung des Bundesrathes (Berlin, 1894); A. Herwegen, Reichsverfassung und Bundesrat (Cologne, 1902).

## CHAPTER XI

### THE IMPERIAL GOVERNMENT: REICHSTAG, PARTIES, JUDICIARY

#### I. Composition of the Reichstag—Electoral System

In complete contrast with the Bundesrath, which is a purely federal institution, the Reichstag is broadly national. It represents, not the states, nor yet the people of the states, but the people of the Empire as a whole. From what has been said regarding the preponderance of the autocratic principle in the German system it follows that there is no room in that system for a parliamentary chamber of the nature of the British House of Commons or of the French Chamber of Deputies. None the less, restricted as are its functions, the Reichstag is one of the world's most vigorous and interesting legislative bodies.

**235. Allotment of Seats.**—Members of the Reichstag are chosen for a term of five years,[1] by direct and secret ballot, at an election which takes place on a given day throughout the entire Empire. The number of seats, fixed tentatively by the constitution of 1871 at 382, was, by law of June 25, 1873, providing for the election of fifteen members from Alsace-Lorraine, increased to 397; and it thereafter remained unchanged. The electoral "circles," or districts, each of which returns one member, were laid out originally in such a way as to comprise 100,000 inhabitants each, and also in such a manner that no district would embrace portions of two or more states. Since 1871 there has been no redistricting of the Empire, and the populations comprising the various constituencies have become grossly unequal. Berlin, with more than two million people, is still entitled to but six seats; and the disproportion in other great cities and densely inhabited regions is almost as flagrant.[2] There has long been demand for a redistribution of seats; but, by reason of the proneness of urban constituencies to return to the Reichstag socialists or other radicals,

[1] The term, originally three years, was made five by a law of 1888. The modification went into effect with the Reichstag elected in February, 1890.

[2] In Conservative East Prussia the average number of voters in a district is 121,000; in Socialist Berlin it is 345,000. Twelve of the most populous districts represented in the Reichstag contain 1,950,000 voters; twelve of the least populous, 170,000. The district of Schaumburg-Lippe has but 9,891.

the Government has never been willing to meet the demand. By states, the 397 seats are distributed as follows: Prussia, 236; Bavaria, 48; Saxony, 23; Württemberg, 17; Alsace-Lorraine (Imperial territory), 15; Baden, 14; Hesse, 9; Mecklenburg-Schwerin, 6; Saxe-Weimar, 3; Oldenburg, 3; Brunswick, 3, Hamburg, 3; Saxe-Meiningen, 2; Saxe-Coburg-Gotha, 2; Anhalt, 2; and all others, one each. As in the American House of Representatives, a state is entitled to one member regardless of its population.

**236. Time and Method of Elections.**—Electoral procedure is regulated by the Election Law of May 31, 1869, amended in minor particulars at subsequent dates, and extended in 1871 and in 1873 to the southern states and to Alsace-Lorraine respectively. Elections are held uniformly throughout the Empire on a day fixed by the Emperor. In the event of a dissolution prior to the end of the five-year term an election is required to take place within a period of sixty days, and the new Reichstag must be convened not later than ninety days after the dissolution.[1] For election on the first ballot an absolute majority of the votes cast within the circle, or district, is required. If no candidate obtains such a majority, there follows a second balloting (*Stichwahl*) a fortnight later, when choice is made between the two candidates who upon the first occasion polled the largest number of votes. In the event of a tie, decision is by lot.[2] Secrecy of the ballot is specially safeguarded by regulations enacted April 28, 1903. Each voter, upon appearing at the polls, is furnished with an envelope and a white voting-paper bearing an official stamp. In a compartment arranged for the purpose in the polling room he marks his ballot and incloses it in the envelope. As he leaves the room he hands the envelope to the presiding officer or deposits it in a voting urn. Once elected, a member, according to constitutional stipulation, is a representative, not of the constituency that chose him, but of the people of the Empire as a whole, and he may not be bound by any order or instruction.[3]

[1] Art. 25. Dodd, Modern Constitutions, I., 333.

[2] By reason of the multiplicity of parties the number of second ballotings required is invariably large. In 1890 it was 138; in 1893, 181; in 1898, 185; in 1903, 180; in 1907, 158; and in 1912, 191. It is calculated that the effect of forty per cent of the second ballotings is to prevent the election of the candidate obtaining originally the largest number of votes. The arrangement operates to the advantage principally of the National Liberals, the Radicals, and other essentially moderate parties, and to the disadvantage especially of the Social Democrats. On this subject see A. N. Holcombe, Direct Primaries and the Second Ballot, in *American Political Science Review*, Nov., 1911.

[3] Art. 29. Dodd, Modern Constitutions, I., 333.

**237. The Franchise.**—The franchise is broadly democratic. Every male who, possessing citizenship in the Empire, has completed his twenty-fifth year is entitled to vote in the district in which he has his domicile, provided his name appears on the registration lists. He is not required to be a citizen of the state in which he votes. The only exceptions to the general rule of universal manhood suffrage arise from the disfranchisement of persons under guardianship, bankrupts, beneficiaries of public charity, persons suffering judicial deprivation in respect to certain of their rights as citizens, and persons in active service in the army and navy. Any male citizen, possessed of the right to vote, twenty-five years of age or over, and a resident of a state of the Empire during at least one year, is eligible as a candidate. He is not required to be a citizen of the state from which he aspires to be elected.[1]

**238. Privileges of Members.**—Solicitous lest if members of the Reichstag should be entitled to remuneration for their services the poorer classes would arrive at a preponderance in the chamber, Bismarck insisted in season and out upon the non-payment of representatives, and by the constitution of 1871 salaries were specifically forbidden.[2] During the eighties the Imperial Court of Appeal ruled that the payment of socialist members by their supporters was illegal,[3] though such payment has been in recent times not unknown. Again and again measures providing for the payment of all members from the Imperial treasury were passed in the Reichstag, only to be thrown out by the Bundesrath. May 21, 1906, such a measure was at last enacted by both chambers, providing for a payment of 3,000 marks a session (with a deduction of twenty-five marks for each day's absence), and in addition free passes over German railways during, and for eight days before and after, sessions. Upon the taking effect of this measure, Germany became one of the several European countries in which, within years comparatively recent, the members of the popular legislative chamber have been given a right to public compensation. Special privileges enjoyed by members are of the customary sort. No member may at any time be held legally to account outside the chamber by

[1] On the German Imperial electoral system see Howard, The German Empire, Chap. 5; Lebon, Études sur l'Allemagne politique, 70–83; ibid., Étude sur la législation électorale de l'empire d'Allemagne, in *Bulletin de Législation Comparée*, 1879; G. Below, Das parlamentarische Wahlrecht in Deutschland (Berlin, 1909); and M. H. Nézard, L'Evolution du suffrage universel en Prusse et dans l'Empire allemand, in *Revue du Droit Public*, Oct.–Dec., 1904.

[2] "The members of the Reichstag, as such, shall draw no salary or compensation." Art. 32. Dodd, Modern Constitutions, I., 334.

[3] Cf. the Osborne Judgment of 1909 in England (see p. 127).

reason of his utterances or his votes within it. Unless taken in the commission of a misdemeanor, or during the ensuing day, a member may not be arrested for any penal offense, or for debt, without the consent of the chamber; and at the request of the chamber all criminal proceedings instituted against a member, and any detention for judicial investigation or in civil cases, must be suspended during a session.[1]

## II. Organization and Powers of the Reichstag

**239. Sessions and Officers.**—The constitution stipulates that the Reichstag and the Bundesrath shall meet annually. Beyond this, and the further requirement that the Reichstag shall never be in session when the Bundesrath is not, the Imperial Government is left entirely free in respect to the convening of the representative body.[2] The summons is issued by the Emperor and the sessions are opened by him, in person or by proxy. By him the assembly may be prorogued (though not more than once during a session, and never for a longer period than thirty days without its own consent); by him also, with the assent of the Bundesrath, it may be dissolved.[3] The chamber validates the election of its members, regulates its own procedure and discipline, and elects its president, vice-presidents, and secretaries.[4] Under standing orders adopted February 10, 1876, the president and vice-president are chosen at the opening of the first session following a general election for a temporary term of four weeks, and upon the expiration of this period an election takes place for the remainder of the session. At the opening of each succeeding session an election of these officials for the session takes place at once. The secretary is chosen at the beginning of each session for the entire session.

**240. Abtheilungen and Committees.**—At the opening of a session the entire membership of the Reichstag is divided by lot into seven Abtheilungen, or bureaus, as nearly equal as it is possible to make them. The bureaus of the French Chamber of Deputies are reconstituted once a month, and those of the Italian once in two months, but those of the Reichstag are maintained unchanged throughout a session, unless upon motion of as many as thirty members the body decides upon a fresh distribution. The functions of the bureaus com-

[1] Arts. 30 and 31. Dodd, Modern Constitutions, I., 334.

[2] Mention has been made of the regulation that, following a dissolution prior to the end of the five-year term, the chamber shall be convoked within ninety days. It will be recalled, also, that the Bundesrath may be convoked without the Reichstag.

[3] Nominally by a resolution of the Bundesrath, with the consent of the Emperor. Art. 24. Dodd, Modern Constitutions, I., 333.

[4] Art. 27. Ibid.

prise, in the main, the passing upon the credentials of members of the chamber and the designating of members of committees. There is in the Reichstag but one standing committee—that on elections. It is perpetuated throughout a session. All other committees are made up, as occasion requires, by the appointment by ballot of an equal number of members by each of the seven bureaus; although, in point of fact, the preparation of committee lists falls largely to the party leaders of the chamber. The function of committees is the preliminary consideration of measures and the reporting of them and of evidence relating to them, to the chamber. Bills are not, however, in all cases referred to committees.

**241. Methods of Business.**—Measures proposed for enactment pass through the three readings which have come to be customary among modern legislative assemblies. Debate is carried on under regulations closely resembling those which prevail in the British House of Commons and distinctly less restrictive than those in vogue in the French Chamber of Deputies. Members of the Bundesrath, to whom is assigned a special bench, possess the right to appear and to speak at pleasure. Debaters address the chamber from the tribune or from their seats as they choose, and they speak whenever they can secure the recognition of the presiding official, not, as in France, in the hard and fast order indicated by a previously prepared written list. Like the Speaker of the House of Commons, the president of the Reichstag is a strictly non-partisan moderator. A fixed tradition of the office is that during debate the chair shall recognize alternately the supporters and the opponents of the measure under consideration. As a general rule, closure of debate may be ordered upon the initiative of thirty members.

Unlike the sittings of the Bundesrath, which take place invariably behind closed doors, those of the Reichstag are, by constitutional provision, public. Under the standing orders, however, the body may go into secret session, on motion of the president, or of ten members. Publicity is further assured by the constitutional stipulation that "no one shall be held responsible for truthful reports of the proceedings of the public sessions of the Reichstag." [1] Measures are carried by absolute majority; and, while discussion may proceed in the absence of a quorum, no vote or other action is valid unless there is present a majority of the full membership of the body, that is, since 1873, 199.

**242. Powers.**—The legislative power of the Empire is vested in the Reichstag and the Bundesrath conjointly, and a majority of the votes of both bodies is necessary for the enactment of a law. So declares

[1] Art. 22. Dodd, Modern Constitutions, I., 333.

the constitution. The legislative functions of the popular chamber are, however, in practice distinctly subordinate to those of the Bundesrath. The Reichstag possesses no such power of legislative initiative and discretion as is possessed by the popular chambers of Great Britain, France, Italy, and the United States. Its consent is necessary for the enactment of every law, for the adoption of every constitutional amendment, and for the ratification of every treaty affecting matters within the domain of Imperial legislation. But bills, including those relating to finance, originate ordinarily with the Chancellor and the Bundesrath; the procedure followed in the shaping of revenue and military measures puts the Reichstag distinctly at a disadvantage; and, at the best, the part which the chamber can play in the public policy of the Empire is negative and subsidiary. It can block legislation and discuss at length the policy of the Government, but it is not vested by the constitution with power sufficient to make it an effective instrument of control. It is within the competence of the Bundesrath, with the assent of the Emperor, to dissolve the popular chamber at any time, and, as has been pointed out, such action is taken without an iota of the ministerial responsibility which in other nations ordinarily accompanies the right of dissolution. On several occasions since 1871 the Reichstag has been dissolved with the sheer intent of putting an end to its obstructionism.[1]

The standing orders of the chamber make mention of the right of interpellation, and resort is occasionally had to this characteristic continental legislative practice. There are no ministers, however, to whom an interpellation may be addressed except the Chancellor, and even he has no right to appear in the Reichstag save as a member of the Bundesrath. The consequence is that interpellations are addressed, in practice, to the Bundesrath. It is only where the parliamentary system prevails, as in France and Italy, that the device of interpellation can be made to assume much importance. The possibility of a larger opportunity for interpellation, which should involve the right of the chamber to adopt resolutions declaring satisfaction or dissatisfaction with the answer made, was warmly, but on the whole inconclusively, discussed in the Reichstag in 1912.[2]

[1] Lowell, Governments and Parties, I., 257.

[2] On the Reichstag see Howard, The German Empire, Chap. 5; A. Lebon, Le Reichstag allemand, in *Annales de l'École Libre des Sciences Politiques*, April, 1889; ibid., Études sur l'Allemagne politique, Chap. 2; Laband, Das Staatsrecht des deutschen Reiches, §§ 32–38; H. Robalsky, Der deutsche Reichstag (Berlin, 1897); G. Leser, Untersuchungen über das Wahlprüfungsrecht des deutschen Reichstags (Leipzig, 1908). There is a full discussion of German methods of legislation in Laband, *op. cit.*, §§ 54–59.

## III. The Rise of Political Parties

In Germany, as in continental countries generally, the number of political groups is legion. Many are too small and unstable to be entitled properly to the designation of parties; and, in truth, of even the larger ones none has ever become so formidable numerically as to acquire a majority in the popular chamber. For the enactment of measures the Government is obliged to rely always upon some sort of coalition, or, at best, upon the members of a group which for the time being holds the balance between two opposing alignments.

**243. Conservatives and Progressives.**—The party situation of the present day has been reached in consequence of the gradual disintegration of the two great political groups with which Prussia entered upon the period of Bismarck's ministry; and to this day the parties of the German Empire and those of the Prussian kingdom are largely identical.[1] The two original Prussian groups were the Conservatives and the Fortschritt, or Progressives, of which the one comprised, throughout the middle portion of the nineteenth century, the supporters of the Government and the other its opponents. The Conservatives were pre-eminently the party of the landed aristocracy of northern and eastern Germany. During twenty years prior to 1867 they dominated completely the Prussian court and army. Following the Austrian war of 1866, however, the Conservative ascendancy was broken and there set in that long process of party dissolution by which German political life has been brought to its present confused condition. To begin with, each of the two original parties broke into two distinct groups. From the Conservatives sprang the Frei Conservativen, or Free Conservatives; from the Fortschritt, the National-Liberal-Partei, or National Liberals. In the one case the new group comprised the more advanced element of the old one; in the other, the more moderate; so that, in the order of radicalism, the parties of the decade following 1866 were the Conservatives, the Free Conservatives, the National Liberals, and the Fortschrittspartei, or Radicals. Among these four groups Bismarck was able to win for his policy of German unification the support of the more moderate, that is to say, the second and third. The ultra-Conservatives clung to the particularistic régime of earlier days, and with them the genius of "blood and iron" broke definitely in 1866. The Free Conservatives comprised at the outset

[1] To so great an extent is this true that, having described in this place the parties of the Empire, it will not be necessary subsequently to allude at length to those of Prussia.

simply those elements of the original Conservative party who were willing to follow Bismarck.

**244. Rise and Preponderance of the National Liberals.**—Similarly among the Progressives there was division upon the attitude to be assumed toward the Bismarckian programme. The more radical wing of the party, i. e., that which maintained the name and the policies of the original Fortschritt, refused to abandon its opposition to militarism and monarchism, opposed the constitution of 1867 for its illiberality, and witheld from Bismarck's government all substantial support. The larger portion of the party members, however were willing to subordinate for a time to Bismarck's nationalizing projects the contest which the united Fortschritt had long been waging in behalf of constitutionalism. The party of no compromise was strongest in Berlin and the towns of east Prussia. It was almost exclusively Prussian. The National Liberals, on the contrary, became early an essentially German, rather than simply a Prussian, party. Even before 1871 they comprised, in point both of numbers and of power, the preponderating party in both Prussia and the Confederation as a whole; and after 1871, when the Nationalists of the southern states cast in their lot with the National Liberals, the predominance of that party was effectually assured. Upon the National Liberals as the party of unity and uniformity Bismarck relied absolutely for support in the upbuilding of the Empire. It was only in 1878, after the party had lost control of the Reichstag, in consequence of the reaction against Liberalism attending the great religious contest known as the Kulturkampf, that the Chancellor was in a position to throw off the not infrequently galling bonds of the Liberal alliance.

**245. The Newer Groups: the Centre.**—Meanwhile the field occupied by the various parties that have been named was, from an early date, cut into by an increasing number of newly organized parties and groups. Most important among these were the Clericals, or Centre, and the Social Democrats. The origins of the Centre may be traced to the project which was formulated in December, 1870, to found a new party, a party which should be essentially Catholic, and which should have for its purpose the defense of society against radicalism, of the states against the central government, and of the schools against secularization. A favorite saying of the founders was that "at the birth of the Empire Justice was not present." The party, gaining strength first in the Rhenish and Polish provinces of Prussia and in Bavaria, was able in the elections of 1871 to win a total of sixty seats. Employed by the Catholic clergy during the decade that followed to maintain the cause of the papacy against the machinations of Bismarck, the party early

struck root deeply; and by reason of the absolute identification in the public mind of its interests with the interests of the Catholic Church, ensuring its preponderance in the states of the south, and also by reason of the fact that it has always been more successful than any of its rivals in maintaining compactness of organization, it became, and has continued almost uninterruptedly to the present time, the strongest numerically of all political groups within the Reichstag.

**246. The Newer Groups: the Social Democrats.**—The Social Democratic party was founded in 1869 under the leadership of Wilhelm Liebknecht and August Bebel. In 1863 there had been organized at Leipzig, under the inspiration of the eloquent Marxist Ferdinand Lassalle, a Universal German Workingman's Association. Between the two bodies there was for a time keen rivalry, but at a congress held at Gotha, in May, 1875, they (together with a number of other socialistic societies) were merged in one organization, which has continued to this day to be known as the Social Democratic party. The development of socialism in the Empire between 1870 and 1880, in respect to both numbers and efficiency of organization, was phenomenal. At the parliamentary elections of 1871 the Social Democratic vote was 124,655 (three per cent of the total) and two Social Democrats were chosen to the Reichstag. In 1874 the popular vote was 351,952, and nine members were elected; in 1877 it was 493,288, and the number of successful candidates was twelve. By the Emperor William I. and by his chancellor, Bismarck, as indeed by the governing and well-to-do classes generally, the progress of the movement was viewed with frankly avowed apprehension. Most of the great projects of the Imperial Government were opposed by the Social Democrats, and the members of the party were understood to be enemies of the entire existing order, and even of civilization itself. Two attempts in 1878 upon the life of the Emperor, made by men who were socialists, but disavowed by the socialists as a body, afforded the authorities an opportunity to enter upon a campaign of socialist repression, and from 1878 to 1890 anti-socialist legislation of the most thoroughgoing character was regularly on the statute books and was in no slight measure enforced. At the same time that effort was being made to stamp out socialist propaganda a remarkable series of social reforms was undertaken with the deliberate purpose not only of promoting the public well-being, but of cutting the ground from under the socialists' feet, or, as some one has observed, of "curing the Empire of socialism by inoculation." The most important steps taken in this direction comprised the inauguration of sickness insurance in 1883, of accident insurance in 1884, and of old-age and invalidity insurance in 1889.

For a time the measures of the government seemed to accomplish their purpose, and the official press loudly proclaimed that socialism in Germany was extinct. In reality, however, socialism thrived on persecution. In the hour of Bismarck's apparent triumph the socialist propaganda was being pushed covertly in every corner of the Empire. A party organ known as the *Social Democrat* was published in Switzerland, and every week thousands of copies found their way across the border and were passed from hand to hand among determined readers and converts. A compact organization was maintained, a treasury was established and kept well filled, and with truth the Social Democrats aver to-day that in no small measure they owe their superb organization to the Bismarckian era of repression. At the elections of 1878 the party cast but 437,158 votes, but in 1884 its vote was 549,990 (9.7 per cent of the whole) and the contingent of representatives returned to the Reichstag numbered twenty-four. In 1890 the socialist vote attained the enormous total of 1,427,298 (19.7 per cent of the whole), and the number of representatives was increased to thirty-five. Repression was manifestly a failure, and in 1890 the Reichstag, with the sanction of the new emperor, William II., wisely declined to renew the statute under which proscription had been employed.

**247. Minor Parties.**—Aside from the Centre and the Social Democrats, the newer party groups in Germany—the Guelfs, the Poles, the Danes, the Alsatians, the Antisemites, etc.—are small and relatively unimportant. All are particularistic and irreconcilable; all are organized on the basis of local, racial, or religious interests. Apart, indeed, from the National Liberals and the Socialists, it cannot be said that any one of the German political groups, large or small, is broadly national, in either its tenets or its constituency. The Guelfs, or Hanoverische Rechtspartei, comprise the irreconcilables among the old Hanoverian nobility who refuse to recognize the validity of the extinction of the ancient Hanoverian dynasty by the deposing of George V. in 1866. As late as 1898 they returned to the Reichstag nine members. In 1903 they elected but five, and in 1907 their representation was reduced to a single deputy. In 1912 their quota became again five. The Poles comprise the Slavic voters of the districts of West Prussia, Posen, and Silesia, who continue to send to the Reichstag members who protest against the incorporation of the Poles in Prussia and in the Empire. At the elections of 1903 they secured sixteen seats, at those of 1907 twenty, and at those of 1912 eighteen. The Danes of northern Schleswig keep up some demand for annexation to Denmark, and measures looking toward Germanization are warmly resented; but the number of people concerned—not more than 150,000—is so small that their political

power is almost *nil*. They have, as a rule, but a single spokesman in the Reichstag. The Alsatians comprise the autonomists of Alsace-Lorraine, and the Antisemites form a group whose original purpose was resistance to Jewish influence and interests.

## IV. Party Politics after 1878

**248. Shifting "Government" Parties.**—To rehearse here the details of German party history during the period since the Government's break with the Liberals in 1878 is impossible. A few of the larger facts only may be mentioned. Between 1878 and 1887 there was in the Reichstag no one great party, nor even any stable coalition of parties, upon which the Government could rely for support. For the time being, in 1879, Bismarck allied with the Centre to bring about the adoption of his newly-framed policy of protection and of the famous Frankenstein clause relative to the matricular contributions of the states.[1] The National Liberals, left in the lurch, broke up, and in 1881 the remnant of the party was able to obtain only forty-five seats. After the elections of that year the Centre commanded in the Reichstag a plurality of forty. The upshot was that, in the effort to procure the dependable support of the Centre, the Government gradually abandoned the Kulturkampf, and for a time the Centre virtually succeeded to the position occupied prior to 1878 by the National Liberals. The elections of 1887, however, again changed the situation. The Centre retained a plurality of some twenty seats, but the Conservatives, Free Conservatives, and National Liberals formed a coalition and between them obtained a total of 220 seats and, accordingly, the control of the Reichstag. Thereupon the Conservatives became the Government's principal reliance and the Centre dropped for a time into a position of neutrality. At the elections of 1890 the coalition, which in truth had been built up by the Government on the basis of a cartel, or agreement, suffered heavy losses. Of 397 seats it carried only 130,[2] while the Centre alone procured 116. Coincident with the overturn came the dismissal of Bismarck and the elevation to the chancellorship of General von Caprivi. Throughout his years of office (1890–1894) Caprivi was able to rely habitually upon the support of no single party or group of parties, and for the enactment of its measures the Government was

[1] This measure provided that each year all proceeds from the Imperial customs and tobacco tax in excess of 130,000,000 marks should be distributed among the several states in proportion to their population. Its author was Frankenstein, a leader of the Centre.

[2] Conservatives 65, Free Conservatives 24, National Liberals 41.

obliged to seek assistance now in one quarter and now in another, according as circumstances dictated.

**249. The Agrarian Movement and the Rise of the Bloc.** —Two or three developments of the period stand out with some distinctness. One was the break-up, apparently for all time, of the Fortschrittpartei, or Radical party, in consequence of the elections of 1893. A second was the rise of the Government's prolonged contest with the Agrarians. The Agrarian group, of which indeed one hears as early as 1876, comprised principally the grain-growing landholders of northern and eastern Germany. By treaties concluded in 1892–1894 with Austria-Hungary, Italy, Belgium, Russia, and other nations, German import duties on grain were considerably reduced in return for advantages given to German manufacturers. Low duties meant cheap foodstuffs, and in the negotiation of these treaties the Government found itself supported with enthusiasm not only by the Centre, but also by the Social Democrats and the surviving Radicals. The Conservatives were divided. Those of Agrarian sympathies (especially the Prussian landholders) allied themselves with the forces of opposition. But the remainder gave the Government some measure of support. And from this last-mentioned fact arose a final political development of large significance during the Caprivi period, namely, the creation of that *bloc*, or affiliation, of Centre and Conservatives (popularly referred to as the "blue-black" *bloc*) upon which the Government was destined regularly to rely through upwards of a decade and a half. During the chancellorship of Prince Chlodwig Hohenlohe-Schillingsfürst (1894–1900) the struggle with the Agrarians was continued and the preponderance of the *bloc* became an established fact. Finally, should be mentioned the rapidly accelerating growth of the Social Democracy. In 1893 the popular party cast a total of 1,876,738 votes and elected forty-four representatives. In 1896 its vote was 2,007,076 and the number of members elected was fifty-seven. In 1903 its vote rose to the enormous proportions of 3,008,000 (24 per cent of the total, and larger than that of any other single party), and the quota in the Reichstag was increased to seventy-nine.

**250. The Elections of 1903 and 1907.**—At the elections of 1903 the *bloc* suffered numerically a loss of strength. The Centre obtained 102 seats, the Conservatives 53, and the Free Conservatives, or "Party of the Empire," 22—an aggregate of only 177. By deft management, however, Chancellor von Bülow (1900-1908) contrived to play off through several years the opposing forces, and so to preserve, for all practical purposes, the working efficiency of the Government coalition. The elections of January, 1907, brought on by a dissolution of the Reichstag after

the refusal of that body to vote the Government's colonial estimates, were of interest principally by reason of the continued show of strength of the Centre and the falling off of the Social Democrats in their representation in the Reichstag. In the practical working out of political forces it had come about that the Centre occupied in the chamber a pivotal position of such consequence that the Government was in effect absolutely dependent upon the vote of that party for the enactment of its measures. Naturally enough, the party, realizing its power, was prone to put its support upon a contractual basis and to drive with the Government a hard bargain for the votes which it commanded. While hardly in a position to get on without Clerical assistance, the Government in 1907 would have been willing enough to see the Centre's power and independence broken. Not only, however, did the Centre not lose seats by that contest; it in fact realized a gain of two. On the other hand, there was compensation for the Government in the fact that the Social Democrats fell back. They polled a total of 3,250,000 popular votes, as compared with 3,008,000 in 1903; but by reason of the antiquated distribution of seats which prevails in the Empire, the unusual vote polled by other parties, and also the unusual co-operation of the party groups opposed to the Social Democrats, their representation in the Reichstag was cut from 79 to 43.[1]

[1] The total number of popular votes cast in the election was 10,857,000, of which number government candidates received 4,962,000, and opposition candidates 5,895,000. The numerical strength of the various elements composing the Reichstag consequent upon the elections of 1903 and 1907 was as follows:

| | *1903* | *1907* | *Seats gained* | *Seats lost* |
|---|---|---|---|---|
| Centre | 102 | 104 | 2 | 0 |
| Conservatives | 53 | 58 | 5 | 0 |
| Free Conservatives | 22 | 22 | 0 | 0 |
| National Liberals | 51 | 56 | 5 | 0 |
| Social Democrats | 79 | 43 | 0 | 36 |
| Radicals | 42 | 50 | 8 | 0 |
| Antisemites and Economic Union | 22 | 30 | 8 | 0 |
| Poles | 16 | 20 | 4 | 0 |
| Liberal Union | 10 | 13 | 3 | 0 |
| Volkspartei (Democrats of South) | 6 | 7 | 1 | 0 |
| Alsatians | 10 | 7 | 0 | 3 |
| Guelfs or Hanoverians | 5 | 1 | 0 | 4 |
| Danes | 1 | 1 | 0 | 0 |
| Independents | 0 | 7 | 7 | 0 |
| Total | 397 | 397 | 43 | 43 |

## V. Parties since 1907

**251. The Bülow Bloc.**—The period covered by the life of the Reichstag elected in 1907 was remarkable in German political history chiefly by reason of the prolonged struggle for the establishment of parliamentary government which took place within it—a struggle which had its beginning, indeed, in the deadlock by which the dissolution of 1906 was occasioned, which reached its climax in the fiscal debates of 1908–1909, and which during the years that followed gradually subsided, leaving both the status of parties and the constitutional order of the Empire essentially as they were at the beginning. Even before the dissolution of 1906 the Conservative-Centre *bloc* was effectually dissolved, principally by the defection of the Centre, and through upwards of three years it was replaced by an affiliation, known commonly as the "*Bülow bloc*," of the Conservatives and the Liberals. This combination, however, was never substantial, and in the course of the conflict over the Government's proposed budget of November, 1908, there was a return to the old alignment, and throughout ensuing years the Conservative-Clerical *bloc* remained a preponderating factor in the political situation.

**252. The Elections of 1912: Parties and Issues.**—The Reichstag of 1907 was dissolved at the termination of its five-year period, and in January, 1912, there was elected a new chamber, the thirteenth since the creation of the Empire. The contest was pre-eminently one of measures rather than of men, but the public interest which it excited was extraordinary. Broadly, the line was drawn between the Government and the parties of the *bloc*, on the one hand, and the more purely popular parties, especially the National Liberals, the Radicals, and the Social Democrats, on the other;[1] and the issues were chiefly such as were supplied by the spirit, purposes, and methods of Chancellor von Bethmann-Hollweg and his Conservative-Clerical allies. Of the alleged reactionism of the Government parties there was widespread complaint. They were held responsible for the fiscal reform of 1909 which imposed burdens unduly heavy on industry and commerce, while sparing land and invested capital; they were charged with re-establishing the yoke

[1] The gravest abuse in connection with the conduct of campaigns and elections in Germany is the pressure which the Government brings to bear systematically upon the enormous official population and upon railway employees (alone numbering 600,000) to vote Conservative, or, in districts where there is no Conservative candidate, Centrist. This pressure is applied through the local bureaucratic organs, principally the Landrath of the Kreis, who not uncommonly is a youthful official of noble origin, related to some important landed family, and a rigid Conservative. It has been estimated that official influence controls a million votes at every national election.

of the Catholic Centre upon the Lutheran majority; and they were reproached for having failed to redeem their promise to liberalize the antiquated franchise arrangements of Prussia. The Conservatives in particular were attacked on the ground of their continued monopoly of patronage and of power. On the whole, however, the most important of practical issues was that of the tariff. Throughout a twelvemonth discontent occasioned by the high cost of living had been general and the Government had been besought by municipalities, workingmen's organizations, and political societies to inaugurate a project for the reduction of the duties imposed upon imported foodstuffs. The demand was in vain and the country was given to understand by the Chancellor that the Government, under Conservative-Agrarian mastery, would stand or fall with "protection for the nation's work" as its battle-cry. Upon this question the National Liberals, being protectionist by inclination, stood with the Government, but the Radicals, the Social Democrats, and some of the minor groups assumed an attitude of clear-cut opposition.

**253. The Results and Their Significance.**—The total number of candidates in the 397 constituencies was 1,428. The Social Democrats alone had a candidate in every constituency, a fact which emphasizes the broadly national character which that party has acquired. The National Liberals had candidates in 200 constituencies, the Centre in 183, the Radicals in 175, and the Conservatives in 132. A second ballot was required in 191 constituencies, or nearly one-half of the whole number. The final results of the election justified completely the general expectation of observers that the Social Democrats would realize enormous gains. The appeal of von Bethmann-Hollweg for solidarity against the Socialists had no such effect as did the similar appeal of von Bülow in 1907. The tactfulness and personal hold of the Chancellor was inferior to that of his predecessor, and the mass of the nation was aroused in 1912 as it was not upon the earlier occasion. The results may be tabulated as follows:

| | *Seats at dissolution* | *Seats acquired by elections of 1912* |
|---|---|---|
| Centre | 103 | 90 |
| Conservatives | 58 | 45 |
| Free Conservatives | 25 | 13 |
| Social Democrats | 53 | 110 |
| National Liberals | 51 | 44 |
| Radicals | 49 | 41 |
| Poles | 20 | 18 |
| Antisemites and Economic Union | 20 | 11 |
| Guelfs or Hanoverians | 1 | 5 |
| Alsatians, Danes, and Independents | 16 | 20 |
| Total | 397 | 397 |

Two of the three parties of the Left, i. e., the National Liberals and the Radicals, suffered substantial losses, but the victory of the Social Democrats was so sweeping that there accrued to the Left as a whole a net gain of forty-two seats.[1] On the other hand, the three parties of the *bloc* lost heavily—in the aggregate thirty-eight seats. The number of popular votes cast for candidates of the *bloc* was approximately 4,500,000; that for candidates of the Left approximately 7,500,000.[2] In Berlin, five of whose six constituencies were represented already by Social Democrats, there was a notable attempt on the part of the socialists to carry the "Kaiser district" in which is located the Kaiserhof, or Imperial residence, and the seat of the Government itself. The attempt failed, but it was only at the second ballot, and by the narrow margin of seven votes, that the socialist candidate was defeated by his Radical opponent. As has been pointed out, the parties of the Left are entirely separate and they are by no means able always to combine in action upon a public question. The ideal voiced by the publicist Naumann, "from Bassermann to Bebel," meaning that the National Liberals under the leadership of Bassermann should, through the medium of the Radicals, amalgamate for political purposes with the Social Democrats under Bebel, has not as yet been realized. None the less there has long been community of interest and of policy, and the elections of 1912 made it possible for the first time for a combination of the three groups and their allies to outweigh decisively any combination which the parties of the *bloc* and their allies can oppose. Before the election there was a clear Government majority of eighty-nine; after it, an opposition majority of, at the least, fourteen. When, in February, 1912, the new Reichstag was opened, it was only by the most dexterous tactics on the part of the *bloc* that the election of the socialist leader Bebel to the presidency of the chamber was averted.

**254. The Parties To-day: Conservatives and Centre.**—The principal effect of the election would seem to be to accentuate the already manifest tendency of Germany to become divided between two great hostile camps, the one representative of the military, bureaucratic, agrarian, financial classes and, in general, the forces of resistance to change, the other representative of modern democratic forces, extreme and in principle even revolutionary. Leaving out of account the minor particularist groups, the most reactionary of existing parties is the Conservatives,

[1] Many of the socialist victories were, of course, at the expense of the National Liberals and Radicals.

[2] The number of electors inscribed on the lists was 14,236,722. The number who actually voted was 12,188,337. The exact vote of the Social Democrats was 4,238,919; of the National Liberals, 1,671,297; of the Radicals, 1,556,549; of the Centre, 2,012,990; and of the Conservatives, 1,149,916.

whose strength lies principally in the rural provinces of Prussia along the Baltic. The most radical is the Social Democrats, whose strength is pretty well diffused through the states of the Empire but is massed, in the main, in the cities. Between the two stand the Centre, the Radicals, and the National Liberals. The Centre has always included both an aristocratic and a popular element, being, indeed, more nearly representative of all classes of people in the Empire than is any other party. Its numerical strength is drawn from the peasants and the workingmen, and in order to maintain its hold in the teeth of the appeal of socialism it has been obliged to make large concessions in the direction of liberalism. At all points except in respect to the interests of the Catholic Church it has sought to be moderate and progressive, and it should be observed that it has abandoned long since its irreconcilable attitude on religion. Geographically, its strength lies principally in the south, especially in Bavaria.

**255. The Social Democrats.**—Nominally revolutionary, the German Social Democracy comprises in fact a very orderly organization whose economic-political tenets are at many points so rational that they command wide support among people who do not bear the party name. Throughout a generation the party has grown steadily more practical in its demands and more opportunist in its tactics. Instead of opposing reforms undertaken on the basis of existing institutions, as it once was accustomed to do, in the hope of bringing about the establishment of a socialistic state by one grand *coup*, it labors for such reforms as are adjudged attainable and contents itself with recurring only occasionally and incidentally to its ultimate ideal. The supreme governing authority of the party is a congress composed of six delegates from each electoral district of the Empire, the socialist members of the Reichstag, and the members of the party's executive committee. This congress convenes annually to regulate the organization of the party, to discuss party policies, and to take action upon questions submitted by the party members. Nominally, the principles of the party are those of Karl Marx, and its platform is the "Erfurt programme" of 1891, contemplating the abolition of class government and of classes themselves, the termination of every kind of exploitation of labor and oppression of men, the destruction of capitalism, and the inauguration of an economic régime under which the production and distribution of goods shall be controlled by the state exclusively. The Radical Socialists, i. e., the old-line members of the party, cling to these time-honored articles of faith. But the mass of the younger element of the party, ably led by Edward Bernstein—the "Revisionists," as they call themselves—consider that the Marxist doctrines are in numerous respects erroneous, and they are insisting

that the Erfurt programme shall be overhauled and brought into accord with the practical and positive spirit of the party to-day. Except Bebel and Kautsky, every socialist leader of note in Germany at the present time is identified with the revisionist movement.[1] The political significance of this situation arises from the fact that the "new socialists" stand ready to co-operate systematically with progressive elements of whatsoever name or antecedents. Already the socialists of Baden, Württemberg, and Bavaria have voted for the local state budgets and have participated in court functions, and upon numerous occasions they have worked hand in hand, not only at elections but in the Reichstag and in diets and councils, with the National Liberals and the Radicals. For the future of sane liberalism in Germany this trend of the party in the direction of co-operative and constructive effort augurs well. At the annual congress held at Chemnitz in September, 1912, the issue of revisionism was debated at length and with much feeling, but an open breach within the party was averted and Herr Bebel was again elected party president. It was shown upon this occasion that the party membership numbered 970,112, a gain of 133,550 during the previous year. It need hardly be observed that of the millions of men who in these days vote for Social Democratic candidates for office hardly a fourth are identified with the formal party organization.[2]

[1] Herr Bebel died August 13, 1913.

[2] Two important works of recent date dealing with the history and character of political parties in Germany are C. Grotewald, Die Parteien des deutschen Reichstags. Band I. Der Politik des deutschen Reiches in Einzeldarstellungen (Leipzig, 1908); and O. Stillich, Die politischen Parteien in Deutschland. Band I. Die Konservativen (Leipzig, 1908), Band II. Der Liberalismus (Leipzig, 1911). The second is a portion of a scholarly work planned to be in five volumes. A brief treatise is F. Wegener, Die deutschkonservative Partei und ihre Aufgaben für die Gegenwart (Berlin, 1908). An admirable study of the Centre is L. Goetze, Das Zentrum, eine Konfessionelle Partie; Beitrage zur seiner Geschichte (Bonn, 1906). The rise of the Centre is well described in L. Hahn, Geschichte des Kulturkampfes (Berlin, 1881). On the rise and progress of the Social Democracy see E. Milhaud, La démocratie socialiste allemande (Paris, 1903); C. Andler, Origines du socialisme d'état en Allemagne (Paris, 1906); E. Kirkup, History of Socialism (London, 1906); W. Sombart, Socialism (New York, 1898); W. Dawson, Bismarck and State Socialism (London, 1891); J. Perrin, The German Social Democracy, in *North American Review*, Oct., 1910. Under the title "Chroniques politiques" there is printed in the *Annales* (since 1911 the *Revue*) *des Sciences Politiques* every year an excellent review of the current politics of Germany, as of other European nations. Other articles of value are: M. Caudel, Les élections allemandes du 16 juin, 1898, et le nouveau Reichstag, in *Annales de l'École Libre des Sciences Politiques*, Nov., 1898; J. Hahn, Une élection au Reichstag allemand, in *Annales des Sciences Politiques*, Nov., 1903; G. Isambert, Le parti du centre en Allemagne et les élections de janvier-fevrier 1907, ibid., March, 1907; P. Matter, La crise du chancelier en Allemagne, ibid., Sept., 1909; A. Marvaud, La presse politique allemande, in *Questions Diplomatiques et Coloniales*, March 16 and April 1, 1910. There are

## VI. Law and Justice

**256. Dual Character.**—Upon the subject of the administration of justice the Imperial constitution of 1871 contained but a single clause, by which there was vested in the Empire power of "general legislation concerning the law of obligations, criminal law, commercial law and commercial paper, and judicial procedure." By an amendment adopted December 20, 1873, the clause was modified to read, "general legislation as to the whole domain of civil and criminal law, and of judicial procedure." [1] Each of the federated states has always had, and still has, its own judicial system, and justice is administered all but exclusively in courts that belong to the states. These courts, however, have been declared to be also courts of the Empire, and, to the end that they may be systematized and that conditions of justice may be made uniform throughout the land, the federal government has not hesitated to avail itself of the regulative powers conferred in 1871 and amplified in 1873 in the constitutional provisions which have been cited.

**257. Diversity of Law Prior to 1871.**—In the first place, there has been brought about within the past generation a unification of German law so thoroughgoing in character as to be worthy of comparison with the systematization of the law of France which was accomplished through the agency of the Code Napoléon. In 1871 there were comprised within the Empire more than two score districts each of which possessed an essentially distinct body of civil and criminal law; and, to add to the confusion, the boundaries of these districts, though at one time coincident with the limits of the various political divisions of the country, were no longer so. The case of Prussia was typical. In 1871 the older Prussian provinces were living under a Prussian code promulgated in 1794; the Rhenish provinces maintained the Code Napoléon, established by Napoleon in all Germany west of the Rhine; in the Pomeranian districts there were large survivals of Swedish law; while the territories

valuable chapters on German politics in W. Dawson, The Evolution of Modern Germany (London, 1908) and O. Eltzbacher (or J. Ellis Barker), Modern Germany, her Political and Economic Problems (new ed., London, 1912). For a sketch of party history during the period 1871–1894 see Lowell, Governments and Parties, II., Chap. 7. An excellent survey of the period 1906–1911 is contained in P. Matter, D'un Reichstag à l'autre, in *Revue des Sciences Politiques*, July–Aug., 1911. On the elections of 1912 see G. Blondel, Les élections au Reichstag et la situation nouvelle des partis, in *Le Correspondant*, Jan. 25, 1912; J. W. Jenks, The German Elections, in *Review of Reviews*, Jan., 1912; A. Quist, Les élections du Reichstag allemand, in *Revue Socialiste*, Feb. 15, 1912; and W. Martin, La crise constitutionnelle et politique en Allemagne, in *Revue Politique et Parlementaire*, Aug. 10, 1912.

[1] Art. 4. Dodd, Modern Constitutions, I., 328.

acquired after the war of 1866 had each its indigenous legal system. Two German states only in 1871 possessed a fairly uniform body of law. Baden had adopted a German version of the Code Napoléon, and Saxony, in 1865, had put in operation a code of her own devising. At no period of German history had there been either effective law-making or legal codification which was applicable to the whole of the territory contained within the Empire. In the domain of the civil law, in that of the criminal law, and in that of procedure the diversity was alike obvious and annoying.

**258. Preparation of the Codes.**—German legal reform since 1871 has consisted principally in the formation and adoption of successive codes, each of which has aimed at essential completeness within a given branch of law. The task had been begun, indeed, before 1871. As early as 1861 the states had agreed upon a code relating to trade and banking, and this code had been readopted, in 1869, by the Confederation of 1867.[1] In 1869 a code of criminal law had been worked out for the Confederation, and in 1870 a code relating to manufactures and labor. Upon the establishment of the Empire, in 1871, there was created a commission to which was assigned the task of drawing up regulations for civil procedure and for criminal procedure, and also a plan for the reorganization of the courts. Beginning with a scheme of civil procedure, published in December, 1872, the commission brought in an elaborate project upon each of the three subjects. The code of civil procedure, by which many important reforms were introduced in the interest of publicity and speed, was well received. That relating to criminal procedure, proposing as it did to abolish throughout the Empire trial by jury, was, however, vigorously opposed, and the upshot was that all three reports were referred to a new commission, by which the original projects relating to criminal procedure and to the organization of the courts were completely remodelled. In the end the revised projects were adopted. October 1, 1879, there went into effect a group of fundamental laws under which the administration of justice throughout the Empire has been controlled from that day to the present. The most important of these was the Gerichtsverfassungsgesetz, or Law of Judicial Organization, enacted January 27, 1877; the Civilprozessordnung, or Code of Civil Procedure, of January 30, 1877; and the Strafprozessordnung, or Code of Criminal Procedure, of February 1, 1877.

It remained only to effect a codification of the civil law. A committee constituted for the purpose completed its work in 1887, and the draft submitted by it was placed for revision in the hands of a new commission, by which it was reported in 1895. In an amended form the Civil Code

[1] It was replaced by a new code May 10, 1897.

was approved by the Reichstag, August 18, 1896, and it was put in operation January 1, 1900. Excluding matters pertaining to land tenure (which are left to be regulated by the states), the Code deals not only with all of the usual subjects of civil law but also with subjects arising from the contact of private law and public law.[1]

**259. The Inferior Courts.**—By these and other measures it has been brought about that throughout the Empire justice is administered in tribunals whose officials are appointed by the local governments and which render decisions in their name, but whose organization, powers, and rules of procedure are regulated minutely by federal law. The hierarchy of tribunals provided for in the Law of Judicial Organization comprises courts of four grades. At the bottom are the Amtsgerichte, of which there are approximately two thousand in the Empire. These are courts of first instance, consisting ordinarily of but a single judge. In civil cases their jurisdiction extends to the sum of three hundred marks; in criminal, to matters involving a fine of not more than six hundred marks or imprisonment of not over three months. In criminal cases the judge sits with two Schöffen (sheriffs) selected by lot from the jury lists. Besides litigious business the Amtsgerichte have charge of the registration of land titles, the drawing up of wills, guardianship, and other local interests.

Next above the Amtsgerichte are the 173 district courts, or Landgerichte, each composed of a president and a variable number of associate judges. Each Landgericht is divided into a civil and a criminal chamber. There may, indeed, be other chambers, as for example a Kammer für Handelssachen, or chamber for commercial cases. The president presides over a full bench; a director over each chamber. The Landgericht exercises a revisory jurisdiction over judgments of the Amtsgericht, and possesses a more extended original jurisdiction in both civil and criminal matters. The criminal chamber, consisting of five judges (of whom four are necessary to convict), is competent, for example, to try cases of felony punishable with imprisonment for a term not exceeding five years. For the trial of many sorts of criminal cases there are special Schwurgerichte, or jury courts, which sit under the presidency of three judges of the Landgericht. A jury consists of twelve members, of whom eight are necessary to convict.

Still above the Landgerichte are the Oberlandesgerichte, of which there are twenty-eight in the Empire, each consisting of seven judges. The Oberlandesgerichte are courts of appellate jurisdiction largely.

[1] A convenient manual for English readers is E. M. Borchard, Guide to the Law and Legal Literature of Germany (Washington, 1912), the first of a series of guides to European law in preparation in the Library of Congress.

Each is divided into a civil and a criminal senate. There is a president of the full court and a similar official for each senate.[1]

**260. The Reichsgericht.**—At the apex of the system stands the Reichsgericht (created by law of October 1, 1879), which, apart from certain administrative, military, and consular courts,[2] is the only German tribunal of an exclusively Imperial, or federal, character. It exercises original jurisdiction in cases involving treason against the Empire and hears appeals from the consular courts and from the state courts on questions of Imperial law. Its members, ninety-two in number, are appointed by the Emperor for life, on nomination of the Bundesrath, and they are organized in six civil and four criminal senates. Sittings are held invariably at Leipzig, in the kingdom of Saxony.

All judges in the courts of the states are appointed by the sovereigns of the respective states. The Imperial law prescribes a minimum of qualifications based on professional study and experience, the state being left free to impose any additional qualifications that may be desired. All judges are appointed for life and all receive a salary which may not be reduced; and there are important guarantees against arbitrary transfer from one position to another, as well as other practices that might operate to diminish the judge's impartiality and independence.[3]

[1] In Bavaria alone there is an Oberste Landesgericht, with twenty-one judges. Its relation to the Bavarian Oberlandesgerichte is that of an appellate tribunal.

[2] The highest administrative court is the Oberverwaltungsgericht, whose members are appointed for life. Under specified conditions, the "committees" of circles, cities, and districts exercise inferior administrative jurisdiction. For the adjustment of disputed or doubtful jurisdictions there stands between the ordinary and the administrative tribunals a Gerichtshof für Kompetenz-konflikte, or Court of Conflicts, consisting of eleven judges appointed for life.

[3] On the German judiciary see Howard, The German Empire, Chap. 9; Laband, Das Staatsrecht des deutschen Reiches, §§ 83–94; C. Morhain, De l'empire allemand (Paris, 1886), Chap. 9.

# CHAPTER XII

## THE CONSTITUTION OF PRUSSIA—THE CROWN AND THE MINISTRY

### I. The German States and their Governments

**261. Variations of Type.**—Within the bounds of Germany to-day there are twenty-five states and one Imperial territory with certain attributes of statehood, Alsace-Lorraine. During the larger portion of the nineteenth century each of these states (and of the several which no longer exist) was possessed of substantial sovereignty, and each maintained its own arrangements respecting governmental forms and procedure. Under the leadership of Prussia, as has been pointed out, the loose Confederation of 1815 was transformed, during the years 1866–1871, into an Imperial union, federal but yet vigorous and indestructible, and to the constituted authorities of this Empire was intrusted an enormous aggregate of governmental powers. The powers conferred were, however, not wholly abstracted from the original prerogatives of the individual states. In a very appreciable measure they were powers, rather, of a supplementary character, by virtue of which the newly created central government was enabled to do, on a broadly national scale, what, in the lack of any such central government, there would have been neither means of doing, nor occasion for doing, at all. Only at certain points, as, for example, in respect to the levying of customs duties and of taxes, was the original independence of the individual state seriously impaired by the terms of the new arrangement.

The consequence is that, speaking broadly, each of the German states maintains to this day a government which is essentially complete within itself. No one of these governments covers quite all of the ground which falls within the range of jurisdiction of a sovereign state; each is cut into at various points by the superior authority of the Empire; but each is sufficiently ample to be capable of continuing to run, were all of the other governments of Germany instantly to be blotted out.[1] Of the twenty-five state governments, three—those of

[1] The best survey in English of the governments of the German states is that in Lowell, Governments and Parties, I., Chap. 6. Fuller and more recent is G. Combes de Lestrade, Les monarchies de l'empire allemand (Paris, 1904). The

the free cities of Bremen, Hamburg, and Lübeck—are aristocratic republics; all the others are monarchies. Among the monarchies there are four kingdoms: Prussia, Bavaria, Saxony, and Württemberg; six grand-duchies: Baden, Hesse, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, and Saxe-Weimar; five duchies: Anhalt, Brunswick, Saxe-Altenburg, Saxe-Coburg-Gotha, and Saxe-Meiningen; and seven principalities: Lippe, Schwarzburg-Rudolstadt, Schwarzburg-Sonderhausen, Schaumburg-Lippe, Reuss Älterer Linie, Reuss Jüngerer Linie, and Waldeck-Pyrmont.

**262. The Preponderance of Prussia.**—From whatever angle one approaches German public affairs, the fact that stands out with greatest distinctness is the preponderant position occupied by the kingdom of Prussia. How it was that Prussia became the virtual creator of the Empire, and how it is that Prussia so dominates the Imperial government that that government and the Prussian are at times all but inextricable, has already been pointed out.[1] Wholly apart from the sheer physical fact that 134,616 square miles of Germany's 208,780, and 40,163,333 people of the Empire's 64,903,423, are Prussian, the very conditions under which the Imperial organization of the present day came into being predetermined that Prussia and things Prussian should enjoy unfailing pre-eminence in all that pertains to German government and politics. Both because they are extended immediately over a country almost two-thirds as large as France, and because of their peculiar relation to the political system of the Empire, the institutions of Prussia call for somewhat detailed consideration.

## II. The Rise of Constitutionalism in Prussia

**263. Regeneration in the Napoleonic Period.**—By reason of the vacillating policies of her sovereign, Frederick William III., the successive defeats of her armies at Jena, Auerstädt, and elsewhere, and the loss, by the treaty of Tilsit in 1807, of half of her territory, Prussia realized from the first decade of the Napoleonic period little save humiliation and disaster. Through the years 1807–1815, however, her lot was wonderfully improved. Upon the failure of the Russian

most elaborate treatment of the subject is to be found in an excellent series of studies edited by H. von Marquardsen and M. von Seydel under the title Handbuch des Oeffentlichen Rechts der Gegenwart in Monographien (Freiburg and Tübingen, 1883–1909). A new series of monographs, comprising substantially a revision of this collection, is at present in course of publication by J. C. B. Mohr at Tübingen. The texts of the various constitutions are printed in F. Stoerk, Handbuch der deutschen Verfassungen (Leipzig, 1884).

[1] See pp. 200–201, 207.

expedition of Napoleon in 1812, Frederick William shook off his apprehensions and allied himself openly with the sovereigns of Russia and Austria. The people rose *en masse*, and in the titanic struggle which ensued Prussia played a part scarcely second in importance to that of any other power. At the end she was rewarded, through the agency of the Congress of Vienna, by being assigned the northern portion of Saxony, Swedish Pomerania, her old possessions west of the Elbe, the duchies of Berg and Julich, and a number of other districts in Westphalia and on the Rhine. Her area in 1815 was 108,000 square miles, as compared with 122,000 at the beginning of 1806; but her loss of territory was more than compensated by the substitution that had been made of German lands for Slavic.[1] The homogeneity of her population was thereby increased, her essentially Germanic character emphasized, and her capacity for German leadership enhanced.

It was not merely in respect to territory and population that the Prussia of 1815 was different from the Prussia of a decade earlier. Consequent upon the humiliating disasters of 1806 there set in a moral regeneration by which there was wrought one of the speediest and one of the most thoroughgoing national transformations recorded in history. In 1807 Frederick William's statesmanlike minister Stein accomplished the abolition of serfdom and of all legal distinctions which separated the various classes of society.[2] In 1808 he reformed the municipalities and gave them important powers of self-government. By a series of sweeping measures he reconstructed the ministerial departments, the governments of the provinces, and the local administrative machinery, with the result of creating an executive system which has required but little modification to the present day. In numerous directions, especially in relation to economic conditions, the work of Stein was continued by that of the succeeding minister, Prince Hardenberg. By Scharnhorst and Gneisenau the military régime was overhauled and a body of spiritless soldiery kept in order by fear was converted into "a union of all the moral and physical energies of the nation." By Wilhelm von Humboldt the modern Prussian school system was created; while by Fichte, Arndt, and a galaxy of other writers there was imparted a stimulus by which the

[1] L. A. Himly, Histoire de la formation territoriale des états de l'Europe centrale, 2 vols. (Paris, 1876), I., 93–110.

[2] It is to be observed that while Stein was officially the author of this reform, the substance of the changes introduced had been agreed upon by the king and his advisers before Stein's accession to office (October 4, 1807). The Edict of Emancipation was promulgated October 9, 1807. It made the abolition of serfdom final and absolute on and after October 8, 1810.

patriotism and aspiration of the Prussian people were raised to an unprecedented pitch.[1]

**264. Obstacles to the Establishment of a Constitution.**—Such an epoch of regeneration could not fail to be a favorable period for the growth of liberal principles of government. In June, 1814, and again in May, 1815, King Frederick William promised, through the medium of a cabinet order, to give consideration to the question of the establishment of a constitution in which provision should be made not merely for the estates of the provinces but also for a national diet. After the Congress of Vienna the task of framing such a constitution was actually taken in hand. But the time was not ripe. Liberalism had gained headway as yet among only the professional classes, while the highly influential body of ultra-conservative landholders were unalterably opposed. Between the eastern provinces, still essentially feudal in spirit, and the western ones, visibly affected by French revolutionary ideas, there was, furthermore, meager community of interest. So keen was the particularistic spirit that not infrequently the various provinces of the kingdom were referred to in contemporary documents as "nations." Among these provinces some retained the system of estates which had prevailed throughout Germany since the Middle Ages, but in some of those which had fallen under the control of Napoleon the estates had been abolished, and in others they were in abeyance. In a few they had never existed. Votes were taken in the assemblages of the estates by orders, not by individuals, and the function of the bodies rarely extended beyond the approving of projects of taxation. Within the provinces there existed no sub-structure of popular institutions capable of being made the basis of a national parliamentary system.

Notwithstanding these deterring circumstances, it is not improbable that some sort of constitution might have been established but for the excesses of the more zealous Liberals, culminating in the murder of the dramatist Kotzebue in 1819, whereby the king was thrown into an attitude, first of apprehension, and finally of uncompromising reaction. By assuming joint responsibility for the Carlsbad Decrees of October 17, 1819, he surrendered completely to the régime of "stability" which all the while had been urged upon him by Metternich. June 11, 1821, he summoned a commission to organize a system of provincial estates;[2] but at the same time the project of a national

[1] E. Meier, Reform der Verwaltungsorganisation unter Stein und Hardenberg (Leipzig, 1881); J. R. Seeley, Life and Times of Stein, 3 vols. (Boston, 1879), Pt. III., Chaps. 3–4, Pt. V., Chaps. 1–3.

[2] The system was created by royal patent June 5, 1823.

constitution and a national diet was definitely abandoned. Under repression Prussian liberalism languished, and throughout the remainder of the reign, i. e., to 1840, the issue of constitutionalism was not frequently raised. In Prussia, as in Austria, the widespread revolutionary demonstrations of 1830 elicited little response.

**265. The Diet of 1847.**—Upon the accession of Frederick William IV., son of Frederick William III., in 1840, the hopes of the Liberals were revived. The new sovereign was believed to be a man of advanced ideas. To a degree he was such, as was manifested by his speedy reversal of his father's narrow ecclesiastical policy, and by other enlightened acts. But time demonstrated that his liberalism was not without certain very definite limits. February 13, 1847, he went so far as to summon a Vereinigter Landtag, or "united diet," of Prussia, comprising all members of the existing eight provincial assemblies, and organized in two chambers—a house of lords and a house containing the three estates of the knights, burghers, and peasants. But the issue was unhappy. As Metternich had predicted, the meeting of the Diet but afforded opportunity for a forceful reassertion of constitutional aspirations, and the assemblage refused to sanction loans upon which the sovereign was bent until its representative character should have been more completely recognized. The king, on his part, declared he would never allow "to come between Almighty God in heaven and this land a blotted parchment, to rule us with paragraphs, and to replace the ancient, sacred bond of loyalty." The deadlock was absolute, and, June 26, the Diet was dissolved.

**266. The Revolution of 1848.** — The dawn of constitutionalism was, however, near. The fundamental law under which Prussia still is governed was a product—one of the few which endured—of the widespread revolutionary movement of 1848. Upon the arrival in Berlin of the news of the overthrow of Louis Philippe (February 24) at Paris and of the fall of Metternich (May 13) at Vienna, the Prussian Liberals renewed with vigor their clamor for the establishment in Prussia of a government of a constitutional type. The demand was closely related to, yet was essentially distinct from, the contemporary project for the inauguration of a new constitutional German Empire. As was proved by the vagaries of the Frankfort Parliament (May, 1848, to June, 1849), conditions were not yet ripe for the creation of a closely-knit empire;[1] and one of the reasons why this was true was that a necessary step toward that culmination was only now about to be taken, i. e., the introduction of constitu-

[1] See p. 198.

tional government in the important kingdom of Prussia. Apprehensive lest the scenes of violence reported from Paris should be re-enacted in his own capital, Frederick William acquiesced in the demands of his subjects in so far as to issue letters patent, May 13, 1848, convoking a national assembly [1] for the consideration of a proposed constitution. Every male citizen over twenty-five years of age was given the right to participate in the choice of electors, by whom in turn were chosen the members of this assembly. May 22, 1848, the assembly met in Berlin and entered upon consideration of the sketch of a fundamental law which the king laid before it. The meeting was attended by disorders in the city, and the more radical deputies further inflamed public feeling by persisting in the discussion of the abolition of the nobility, and of a variety of other more or less impracticable and revolutionary projects. The king took offense because the assembly presumed to exercise constituent functions independently and, after compelling a removal of the sittings to the neighboring city of Brandenburg, he in disgust dissolved the body, December 5, and promulgated of his own right the constitutional charter which he had drawn.

**267. Formation of the Constitution.**—At an earlier date it had been promised that the constitution to be established should be "agreed upon with an assembly of the nation's representatives freely chosen and invested with full powers;" but it had been suggested to the king that the way out of the existing difficulty lay in issuing a constitutional instrument independently and subsequently allowing the Landtag first elected under it to submit it to a legislative revision, and this was the course of procedure which was adopted.[2] Elections were held and, February 26, 1849, the chambers were assembled. Having recognized formally the instrument of December 5, 1848, as the law of the land, the two bodies addressed themselves forthwith to the task of revising it. The result was disagreement and, in the end, the dissolution of the lower house. The constitution of 1848 had been accompanied by an electoral law establishing voting by secret ballot and conferring upon all male citizens equal suffrage. Upon the dissolution of 1849 there was promulgated by the king a thoroughgoing modification of this democratic measure, whereby voting by ballot was abolished and parliamentary electors were divided into three classes whose voting power was determined by prop-

[1] Known technically as Versammlung zur Vereinbarung der preussischen Verfassung.

[2] The confusion of constitutional and ordinary statutory law inherent in this arrangement has influenced profoundly the thought of German jurists.

erty qualifications or by official and professional status. In other words, there was introduced that peculiar three-class system which was already not unknown in the Prussian municipalities, and which, in both national and city elections, persists throughout the kingdom to the present day. In the elections which were held in the summer of 1849 in accordance with this system the democrats refused to participate. The upshot was that the new chambers, convened August 7, 1849, proved tractable enough, and by them the text of the constitution, after being discussed and revised article by article, was at last accorded formal approval. On the last day of January, 1850, the instrument was duly promulgated at Charlottenburg.[1] By Austria, Russia, and other reactionary powers persistent effort was made during the ensuing decade to influence the king to rescind the concession which he had made. He refused, however, to do so, and, with certain modifications, the constitution of 1850 remains the fundamental law of the Prussian kingdom to-day.[2]

**268. Nature of the Constitution.**—The constitution of Prussia is modelled upon that of Belgium. Provisions relating to the powers of the crown, the competence of the chambers, and the functions of the ministers are reproduced almost literally from the older instrument. None the less, the two rest upon widely differing bases. The Belgian fundamental law begins with the assertion that "all powers emanate from the nation." That of Prussia voices no such sentiment, and the governmental system for which it provides has as its cornerstone the thoroughgoing supremacy of the crown.[3] The Liberals of the mid-century period were by no means satisfied with it; and, sixty years after, it stands out among the great constitutional documents of the European world so conspicuous by reason of its disregard of

[1] On the establishment of constitutionalism in Prussia see (in addition to works mentioned on p. 201) P. Matter, La Prusse et la révolution de 1848, in *Revue Historique*, Sept.–Oct., 1902; P. Devinat, Le mouvement constitutionnel en Prusse de 1840 à 1847, ibid., Sept.–Oct. and Nov.–Dec., 1911; Klaczko, L'agitation allemande et la Prusse, in *Revue des Deux Mondes*, Dec., 1862, and Jan., 1863; C. Bornhak, Preussische Staats- und Rechtsgeschichte (Berlin, 1903); H. von Petersdorff, König Friedrich Wilhelm IV. (Stuttgart, 1900); and H. G. Prutz, Preussische Geschichte, 4 vols. to 1888 (Stuttgart, 1900–1902). For full bibliography see Cambridge Modern History, XI., 893–898.

[2] As is true in governmental systems generally, by no means all of the essential features of the working constitution are to be found in the formal documents, much less in the written constitution alone. In Prussia ordinances, legislative acts, and administrative procedure, dating from both before and after 1850, have to be taken into account continually if one would understand the constitutional order in its entirety.

[3] Dupriez, Les Ministres, I., 350.

fundamental democratic principle as to justify completely the charges of anachronism which reformers in Prussia and elsewhere are in these days bringing against it. It provides for the responsibility of ministers, without stipulating a means whereby that responsibility may be enforced. There is maintained under it one of the most antiquated and undemocratic electoral systems in Europe. And, as is pointed out by Lowell, even where, on paper, it appears to be liberal, it is sometimes much less so than its text would lead one to suppose. It contains, for example, a bill of rights, which alone comprises no fewer than forty of the one hundred eleven permanent articles of the instrument.[1] In it are guaranteed the personal liberty of the subject, the security of property, the inviolability of personal correspondence, immunity from domiciliary visitation, freedom of the press, toleration of religious sects, liberty of migration, and the right of association and public meeting. But there is an almost total lack of machinery by which effect can be given to some of the most important provisions relating to these subjects. Some guarantees of what would seem the most fundamental rights, as those of public assemblage and of liberty of teaching, are reduced in practice to empty phrases.[2]

The process of constitutional amendment in Prussia is easy. With the approval of the king, an amendment may at any time be adopted by a simple majority of the two legislative chambers, with the special requirement only that an amendment, unlike a statute, must be voted upon twice, with an interval of three weeks between the two votes. During the first ten years of its existence the constitution was amended no fewer than ten times. Of later amendments there have been six, but none more recent than that of May 27, 1888. The Prussian system of amendment by simple legislative process was incorporated, in 1867, in the fundamental law of the North German Confederation (except that in the Bundesrath a two-thirds vote was required); and in 1871 it was perpetuated in the constitution of the Empire.[3]

[1] Arts. 3–42. Robinson, Constitution of the Kingdom of Prussia, 27–34.

[2] Lowell, Governments and Parties, I., 286.

[3] There is an annotated English version of the Prussian constitution, edited by J. H. Robinson, in the *Annals of the American Academy of Political and Social Science*, Supplement, Sept., 1894. The original text will be found in F. Stoerk, Handbuch der deutschen Verfassungen (Leipzig, 1884), 44–63; also, with elaborate notes, in A. Arndt, Die Verfassungs-Urkunde für den pruessischen Staat nebst Erganzungs- und Ausführungs-Gesetzen, mit Einleitung, Kommentar und Sachregister (Berlin, 1889). The principal treatises on the Prussian constitutional system are H. Schulze, Das preussisches Staatsrecht, auf Grundlage des deutschen Staatsrechtes (Leipzig, 1872–1874); ibid., Das Staatsrecht des Königreichs Preussen, in Marquardsen's Handbuch (Freiburg, 1884); L. von Rönne, Das Staatsrecht

## III. The Crown and the Ministry

**269. Status of the Crown.**—At the head of the state stands the king, in whom is vested the executive, and a considerable share in the legislative, power. The crown is hereditary in the male line of the house of Hohenzollern, following the principle of primogeniture. An heir to the throne is regarded as attaining his majority on the completion of his eighteenth year. It has been pointed out that the German Emperor, as such, has no civil list. He has no need of one, for the reason that in the capacity of king of Prussia he is entitled to one of the largest civil lists known to European governments. Since the increase provided for by law of February 20, 1889, the "Krondotations Rente," as it appears in the annual Prussian budget, aggregates 15,719,296 marks; besides which the king enjoys the revenues from a vast amount of private property, comprising castles, forests, and estates in various parts of the realm. There are also certain special funds the income from which is available for the needs of the royal family.

**270. Powers.**—The powers of the crown are very comprehensive.[1] It is perhaps not too much to say that they exceed those exercised by any other European sovereign. The king is head of the army and of the church, and in him are vested, directly or indirectly, all functions of an executive and administrative character. All appointments to offices of state are made by him immediately or under his authority. The upper legislative chamber is recruited almost exclusively by royal nomination. And all measures, before they become law, require the king's assent; though, by reason of the sovereign's absolute control of the upper chamber, no measure of which he disapproves can ever be enacted by that body, so that there is never an occasion for the exercise of the formal veto. To employ the language of a celebrated German jurist, the king possesses "the whole and undivided power of the state in all its plenitude. It would, therefore, be contrary to the nature of the monarchical constitutional law of Germany to enumerate all individual powers of the king. . . . His sovereign right embraces, on the contrary, all branches of the government. Everything which is decided or carried out in the state takes place in the name of the king. He is the personified power of the

der preussischen Monarchie (Leipzig, 1881–1884); and H. de Grais, Handbuch der Verfassung und Verwaltung in Preussen und dem deutschen Reiche (11th ed., Berlin, 1896). A good brief account is that in A. Lebon, Études sur l'Allemagne politique, Chap. 4.

[1] They are enumerated in articles 45–52 of the constitution. Robinson, Constitution of the Kingdom of Prussia, 36–37.

state."[1] Except in so far as the competence of the sovereign is expressly limited or regulated by the constitution, it is to be regarded as absolute.

**271. The Ministry: Composition and Status.**—The organization of the executive—the creation of ministerial portfolios, the appointment of ministers, and the delimitation of departmental functions—rests absolutely with the king, save, of course, for the necessity of procuring from the Landtag the requisite appropriations. Beginning in the days of Stein with five, the number of ministries was gradually increased until since 1878 there have been nine, as follows: Foreign Affairs;[2] the Interior; Ecclesiastical, Educational, and Sanitary Affairs; Commerce and Industry; Finance; War; Justice; Public Works; and Agriculture, Public Domains, and Forests. Each ministry rests upon an essentially independent basis and there has been little attempt to reduce the group to the uniformity or symmetry of organization that characterizes the ministries of France, Italy, and other continental monarchies. Departmental heads, as well as subordinates, are appointed with reference solely to their administrative efficiency, not, as in parliamentary governments, in consideration of their politics or of their status in the existing political situation. They need not be, and usually are not, members of either of the legislative chambers.

For it is essential to observe that in Prussia ministers are responsible only to the sovereign, which means that the parliamentary system, in the proper sense, does not exist. The constitution, it is true, prescribes that every act of the king shall be countersigned by a minister, who thereby assumes responsibility for it.[3] But there is no machinery whereby this nominal responsibility can be made, in practice, to mean anything. Ministers do not retire by reason of an adverse vote in the Landtag; and, although upon vote of either legislative chamber, they may be prosecuted for treason, bribery, or violation of the constitution, no penalties are prescribed in the event of conviction, so that the provision is of no practical effect.[4] Every minister possesses the right

[1] Schulze, Preussisches Staatsrecht, I., 158.

[2] The Minister of Foreign Affairs is at the same time the Minister-President of Prussia and the Chancellor of the Empire. On the functions of the various ministries see Dupriez, Les Ministres, I., 448–462.

[3] Art. 44.

[4] Art. 61. Robinson, Constitution of the Kingdom of Prussia, 40. In the words of a German jurist, "the anomaly continues to exist in Prussia of ministerial responsibility solemnly enunciated in the constitution, the character of the responsibility, the accuser and the court specified, and at the same time a complete lack of any legal means by which the representatives of the people can protect even the constitution itself against the most flagrant violations and the most dangerous attacks." Schulze, Preussisches Staatsrecht, II., 694.

to appear on the floor of either chamber, and to be heard at any time when no member of the house is actually speaking. In the exercise of this privilege the minister is the immediate spokesman of the crown, a fact which is apt to be apparent from the tenor of his utterances.

**272. The Ministry: Organization and Workings.**—The Prussian ministry exhibits little solidarity. There is a "president of the council of ministers," who is invariably the Minister for Foreign Affairs and at the same time the Chancellor of the Empire, but his functions are by no means those of the corresponding dignitary in France and Italy. Over his colleagues he possesses, as president, no substantial authority whatsoever.[1] In the lack of responsibility to the Landtag, there is no occasion for an attempt to hold the ministry solidly together in the support of a single, consistent programme. The ministers are severally controlled by, and responsible to, the crown, and the views or policies of one need not at all be those of another. At the same time, of course, in the interest of efficiency it is desirable that there shall be a certain amount of unity and of concerted action. To attain this there was established by Count Hardenberg a Staats-Ministerium, or Ministry of State, which occupies in the Prussian executive system a position somewhat similar to that occupied in the French by the Council of Ministers.[2] The Ministry of State is composed of the nine ministerial heads, together with the Imperial secretaries of state for the Interior, Foreign Affairs, and the Navy. It holds meetings at least as frequently as once a week for the discussion of matters of common administrative interest, the drafting of laws or of constitutional amendments, the supervision of local administration, and, in emergencies, the promulgation of ordinances which have the force of law until the ensuing session of the Landtag. There are certain acts, as the proclaiming of a state of siege, which may be performed only with the sanction of this body. The fact remains, none the less, that, normally, the work of the several departments is carried on independently and that the ministry exhibits less cohesion than any other in a state of Prussia's size and importance. It is to be observed that there is likewise a Staatsrath, or Council of State (dating originally from 1604

[1] The office of Chancellor was discontinued with the death of Hardenberg and that of Minister-President substituted. The Chancellor possessed substantial authority over his colleagues. Since 1871, the Minister-President has been a Chancellor, but of the Empire, not of Prussia.

[2] The Staats-Ministerium was called into being, to replace the old Council of State, by an ordinance of October 27, 1810. Its functions were further elaborated in cabinet orders of June 3, 1814, and November 3, 1817. The constitution of 1850 preserved it and assigned it some new duties.

and revived in 1817), composed of princes, high officials of state, ministers, judges, and other persons of influence designated by the crown. It may be consulted on legislative proposals, disputes as to the spheres of the various ministries, and other important matters. In barrenness of function, however, as in structure, it bears a close resemblance to-day to the British Privy Council.[1]

**273. Subsidiary Executive Bodies.**—Two other executive organs possess considerable importance. These are the Oberrechnungskammer, or Supreme Chamber of Accounts, and the Volkswirthschaftsrath, or Economic Council. The Oberrechnungskammer has existed continuously since 1714. Its function is the oversight and revision of the finances of the departments, the administration of the state debt, and the acquisition and disposal of state property. Its president is appointed by the crown, on nomination of the Staats-Ministerium. Its remaining members are designated by the crown on nomination of its own president, countersigned by the president of the Staats-Ministerium. All enjoy the tenure and the immunities of judges, and the body collectively is responsible, not to the Ministry of State, but to the crown immediately. In status and function it resembles somewhat closely the French Cour des Comptes. The same group of men, with additional members appointed by the Bundesrath, serves as the Chamber of Accounts of the Empire. The Volkswirthschaftsrath consists of seventy-five members named by the king for a term of five years. Its business is to give preliminary consideration to measures vitally affecting large economic interests, to determine what should be Prussia's position in the Bundesrath upon these measures, and to recommend to the crown definite courses of action regarding them. Its function is purely consultative.

[1] On the organization and functions of the Prussian ministry see Dupriez, Les Ministres, I., 345–462; von Seydel, Preussisches Staatsrecht, 91–104; von Rönne, Das Staatsrecht der preussischen Monarchie, 4th ed., III.; Schulze, Das preussische Staatsrecht, II.

## CHAPTER XIII

### THE PRUSSIAN LANDTAG—LOCAL GOVERNMENT

#### I. Composition of the Landtag

**274. The House of Lords: Law of 1853.**—Legislative authority in the kingdom of Prussia is shared by the king with a national assembly, the Landtag, composed of two chambers, of which the upper is known as the Herrenhaus, or House of Lords, and the lower as the Abgeordnetenhaus, or House of Representatives. Under the original provisions of the constitution, the House of Lords was composed of (1) adult princes of the royal family; (2) heads of Prussian houses deriving directly from the earlier Empire; (3) heads of families designated by royal ordinance, with regard to rights of primogeniture and lineal descent; (4) 90 members chosen by the principal taxpayers of the kingdom; and (5) 30 members elected by the municipal councils of the larger towns. By law of May 7, 1853, this arrangement was set aside and in its stead it was enacted that the chamber should be made up entirely of persons appointed by the crown in heredity or for life; and, on the authorization of this measure, there was promulgated, October 12, 1854, a royal ordinance by which the composition of the body was fixed substantially as it is to-day. The act of 1853 forbids that the system thus brought into operation be further modified, save with the assent of the Landtag; but this does not alter the fact that the present composition of the Prussian upper house is determined, not by the constitution of the kingdom, but by royal ordinance authorized by legislative enactment.

**275. The House of Lords To-day.**—The component elements of the House of Lords to-day are: (1) princes of the royal family who are of age; (2) scions of the Hohenzollern-Hechingen, Hohenzollern-Sigmaringen, and sixteen other once sovereign families of Prussia; (3) heads of the territorial nobility created by the king, and numbering some fifty members; (4) a number of life peers, chosen by the king from among wealthy landowners, great manufacturers, and men of renown; (5) eight titled noblemen appointed by the king on the nomination of the resident landowners of the eight older provinces of the kingdom; (6) representatives of the universities, of religious bodies, and of towns of over 50,000 inhabitants, presented by these various

organizations respectively, but appointed ultimately by the king; and (7) an indefinite number of members, chosen by the king for life on any ground whatsoever, and under no restriction except that peers must have attained the age of thirty years.

The composition of the chamber is thus extremely complex. There are members *ex-officio*, members by royal appointment, members by hereditary right. But the appointing power of the crown is so comprehensive that the body partakes largely of the character of a royal creation. Its membership is recruited almost exclusively from the rigidly conservative landowning aristocracy, so that in attitude and policy it is apt to be in no degree representative of the mass of the nation, at least of the industrial classes. As a rule, though not invariably, it is ready to support cordially the measures of the crown. In any event, through exercise of the unrestricted power of creating peers, the crown is in a position at all times to control its acts. The number of members varies, but is ordinarily about 300.[1]

**276. The House of Representatives.**—The Abgeordnetenhaus, or House of Representatives, consists of 443 members—362 for the old kingdom, 80 added in 1867 to represent the newly acquired provinces, and one added in 1876 to represent Lauenburg. Representatives are elected for a five-year term, and every Prussian is eligible who has completed his thirtieth year, who has paid taxes to the state during as much as three years, and whose civil rights have not been impaired by judicial sentence. Every Prussian who has attained his twenty-fifth year, and who is qualified to vote in the municipal elections of his place of domicile, is entitled to participate in the choice of a deputy. At first glance the Prussian franchise appears distinctly liberal. It is so, however, only in the sense that comparatively few adult males are excluded from the exercise of it. In its actual workings it is one of the most undemocratic in Europe.

**277. The Electoral System.**—Representatives are chosen in electoral districts, each of which returns from one to three members—as a rule, two. There has been no general redistribution of seats since 1860 (although some changes were made in 1906), so that in many districts, especially in the urban centers whose growth has fallen largely within the past fifty years, the quota of representatives is grossly disproportioned to population. Until 1906 the entire city of Berlin returned but nine members, and its quota now is only twelve.[2] The

[1] Lebon, Études sur l'Allemagne politique, 187–197.

[2] Prior to 1906 the Berlin representatives were chosen in four electoral districts, but in the year mentioned the city was divided into twelve single-member constituencies.

enfranchised inhabitants of the district do not, moreover, vote for a representative directly. The essential characteristics of the Prussian electoral system are, first, that the suffrage is indirect, and, second, that it is unequal. The precise method by which a representative is elected [1] may be indicated as follows: (1) each circle, or district, is divided into a number of Urwahlbezirke, or sub-districts; (2) in each Urwahlbezirk one Wahlman, or elector, is allotted to every 250 inhabitants; (3) for the choosing of these Wahlmänner the voters of the sub-district are divided into three classes, arranged in such a fashion that the first class will be composed of the payers of direct taxes, beginning with the largest contributors, who collectively pay one-third of the tax-quota of the sub-district, the second class will include the payers next in importance who as a group pay the second third, and the last class will comprise the remainder; (4) each of these classes chooses, by absolute majority, one-third of the electors to which the Urwahlbezirk is entitled; finally (5) all the electors thus chosen in the various Urwahlbezirke of the district come together as an electoral college and choose, by absolute majority, a representative to sit in the Abgeordnetenhaus at Berlin.[2]

**278. Origins and Operation of the System.**—The principal features of this unique system were devised as a compromise between a thoroughgoing democracy based on universal suffrage and a government exclusively by the landholding aristocracy. The three-class arrangement originated in the Rhine Province where, by the local government code of 1845, it was put in operation in the elections of the municipalities. In the constitution of 1850 it was adopted for use in the national elections, and in subsequent years it was extended to municipal elections in virtually all parts of the kingdom, so that it came to be a characteristic and well-nigh universal Prussian institution. It need hardly be pointed out that the scheme throws the bulk of political power, whether in municipality or in nation, into the hands of the men of wealth. In not fewer than 2,214 Urwahlbezirke a third of the direct taxes is paid by a single individual, who therefore comprises alone the first electoral class; and in 1703 precincts the first class consists of but two persons. In most cases the number of the least considerable taxpayers who in the aggregate pay the last third of the tax-quota is relatively large. Taking the kingdom as a whole,

[1] As stipulated in articles 69–75 of the constitution. Robinson, The Constitution of the Kingdom of Prussia, 42–44.

[2] In the event that, between elections, a seat falls vacant, a new member is chosen forthwith by this same body of Wahlmänner without a fresh appeal to the original electorate of the district.

it was estimated in 1907 that approximately three per cent of the electorate belonged to the first class, about 9.5 per cent to the second, and the remaining 87.5 to the third. In the individual precinct, as in the nation at large, the little group at the top, however, possesses precisely as much political weight as the large group at the bottom, because it is entitled to choose an equal number of Wahlmänner. The result is a segregation of classes which, whatever its merits at certain points, is of very questionable utility as a basis of government.

The effect politically is to give an enormous advantage to the conservative and agrarian interests and to deprive the socialists and other popular elements all but completely of representation. At the elections of 1903 the Social Democrats put forth effort for the first time in an organized way to win seats in the Landtag. Under the system which has been described a total of 324,157 Conservative votes sufficed to elect 143 representatives, but 314,149 Social Democratic votes did not secure the return of a single member. In the Imperial elections of the same year, conducted under a scheme of equal suffrage, the popular party sent to the Reichstag eighty members. At the Prussian elections of 1908 a Social Democratic vote which comprised approximately twenty-four per cent of the total popular vote yielded but seven members in a total of 443. So glaringly undemocratic is the prevailing system that even that arch-aristocrat, Bismarck, was upon one occasion moved to denounce the three-class arrangement as "the most miserable and absurd election law that has ever been formulated in any country."[1]

## II. The Movement for Electoral Reform

**279. The Programme Formulated.**— Throughout more than a generation there has been in Prussia persistent agitation in behalf of electoral reform. In 1883, and again in 1886, the lower chamber debated, but rejected, a project for the substitution of the secret ballot for the existing *viva voce* method of voting. In 1883 the Social

[1] For a brief exposition of the practical effects of the system, especially on political parties, see Lowell, Governments and Parties, I., 305–308. The system as it operates in the cities is described in Munro, The Government of European Cities, 128–135, and in R. C. Brooks, The Three-Class System in Prussian Cities, in *Municipal Affairs*, II., 396ff. Among special treatises may be mentioned H. Nézard, L'Évolution du suffrage universel en Prusse et dans l'Empire allemand (Paris, 1905); I. Jastrow, Das Dreiklassensystem (Berlin, 1894); R. von Gneist, Die nationale Rechtsidee von den Ständen und das preussische Dreiklassensystem (Berlin, 1904); and G. Evert, Die Dreiklassenwahl in den preussischen Stadt-und Landgemeinden (Berlin, 1901).

Democratic party proclaimed its purpose to abstain from voting until the inequalities arising from "the most wretched of all electoral systems" should have been removed. Gradually there was worked out a programme of reform to which socialists, Liberals, and progressives of various schools gave adherence, wholly or in part, comprising four principal demands: (1) the abolition of discriminations against the small taxpayer; (2) the introduction of the secret ballot; (3) the replacing of indirect by direct elections; and (4) a redistribution of seats. And these are to-day the objects chiefly sought by the reform elements.

**280. The Efforts of 1906 and 1908.**—In 1906 a bill raising the number of representatives from 433 to 443 and making provision for a slight redistribution of seats was carried, but a Radical amendment providing for direct and universal suffrage and the secret ballot was opposed with vigor by the Government and failed of adoption. In January, 1908, there were notable socialist demonstrations throughout the country in behalf of the establishment of equal manhood suffrage. Prince von Bülow, while admitting the existing system to be defective, opposed the introduction in Prussia of the electoral system of the Empire, alleging that it would not be compatible with the interests of the state and maintaining that every sound reform of the franchise must retain and secure the preponderance of the great mass of the middle class, and therefore must aim at the establishment of an equitable gradation in the weight of the various classes of votes. It was added that the Government would consider whether this object might best be attained by basing the franchise entirely upon the amount of taxes paid by the voter, or by taking into account age, educational attainments, or other qualifications. When the Radicals introduced in the lower chamber a resolution declaring for equal manhood suffrage the Clericals and the Poles supported it, but the Conservatives and National Liberals of all shades stood by the Government, and the resolution was overwhelmingly rejected. The elections of June, 1908, at which, as has been pointed out, seven Social Democratic members were returned, demonstrated that even under existing electoral arrangements dissatisfaction could find some expression. The National Liberals and the Free Conservatives, who had been outspoken in opposition to the extension of the suffrage, lost, respectively, twelve and four seats. When, however, the Radical resolution reappeared it again was thrown out.

**281. The Project of 1910.**—By popular demonstrations in Berlin and in other important towns throughout the kingdom, the Government was brought to the conviction that it was not expedient to maintain

too long its hitherto inflexible attitude. In a speech from the throne, January 11, 1910, the sovereign announced the early introduction of a measure for electoral reform, and a month later it became the unwelcome duty of the new Chancellor, von Bethman-Hollweg, to lay the Government's project before the chambers. Instantly it was evident, not only that the proposal had been prepared entirely under bureaucratic direction, but that the real purpose of the Government was to carry through the Landtag an electoral bill designed to appease the reformers without yielding the essential features of the existing system. The project provided, in brief: (1) that the tripartite system be retained, though the quota of taxes admitting to the first class should be reduced to a uniform level of five thousand marks (no weight being given to payment beyond that amount), and voters of specified degrees of education, or occupying certain official positions, or having served a stipulated number of years in the army or navy, should be assigned to the higher classes, with but incidental regard to their tax contributions: (2) that *viva voce* voting be retained; (3) that the choice of electors be by districts rather than by Urwahlbezirke; and (4) that direct voting be substituted for indirect. There was no mention of redistribution, and the secret ballot was specifically withheld. The rearrangement of classes did not touch the fundamental difficulty, and the only demand of the reformers which was really met was that for direct elections. In his speech in defense of the measure the Chancellor frankly admitted that the Government was irrevocably opposed to a suffrage system based on democratic principles.

The scheme was ridiculed by the liberal elements. In protest against the nonchalance with which the door had been shut in their faces the working classes in Berlin and elsewhere entered upon a fresh series of demonstrations by reason of which the Government was embarrassed through several weeks. In the Landtag the Conservative and Free Conservative parties, comprising the Government majority, stood solidly for the bill, in the conviction that if there must be change at all those changes which the bill proposed would be less objectionable than those which were being urged by the radicals. The Centre wavered, while the National Liberals, the Poles, the Social Democrats, and the Progressive People's Party stood firmly in opposition. February 13 the bill was referred in the lower house to a committee, by which it was reported so amended as to provide for the secret ballot but not for direct elections. March 16, by a vote of 283 to 168, the measure in this amended form, was passed by the chamber, all parties except the Conservatives and the Centre voting against it. April 29 the bill was passed in the upper chamber, by a vote of 140 to 94, in the form in

which originally it had been introduced. All efforts on the part of the Government to bring the lower house to an acceptance of the original measure proved fruitless, and the upshot was that, May 27 following, the project was withdrawn from the chambers. The overhauling of the antiquated electoral system in Prussia, both national and municipal, remains a live issue, but agreement upon a definite project of reform is apparently remote. The problem is enormously complicated by the virile traditions of aristocratic, landed privilege which permeate the inmost parts of the Prussian political system. In respect to redistribution, too, a fundamental obstacle lies in the consideration that such a step on the part of Prussia would almost of necessity involve a similar one on the part of the Empire. In both instances the insuperable objection, from the point of view of the Government, arises from the vast acquisition of political power which would accrue from such reform to the socialists and other radical parties.[1]

## III. Organization and Functions of the Landtag

**282. Sessions and Privileges of Members.**—The maximum life of a Landtag is five years; but the lower house may at any time be dissolved by the crown. A dissolution must be followed by the election of a new chamber within sixty days, and the ensuing session is required to begin within three months. The power of dissolution is not infrequently exercised, and there have been instances of the dissolution of a newly elected chamber, by reason of its objectionable political character, before it had been convened for so much as a single sitting. According to law the Landtag must be convoked in regular session every year, during the period between the beginning of November and the middle of the following January.[2] It may be called in extraordinay session at any time. Without its own consent, it may not be adjourned for more than thirty days, or more than once during a session. Save in the event of the necessity of making provision for a regency, the chambers sit separately; but the two must be convoked, opened, adjourned, and prorogued simultaneously.

Each chamber passes upon the qualifications of its members; each elects it own presidents, vice-presidents, and secretaries; and each regulates its own discipline and order of business. Sittings of both chambers are public, save when, on proposal of the president or of ten

[1] P. Matter, La réforme électorale en Prusse, in *Annales des Sciences Politiques*, Sept., 1910; C. Brocard, La réforme électorale en Prusse et les partis, in *Revue Politique et Parlementaire*, Feb., 1912.

[2] Art. 76.

members, it is decided to close the doors. Members are regarded as representatives of the population of the kingdom as a whole. They may not be bound by any sort of instructions; nor may they be called to account legally for votes cast, or for statements made, in the fulfillment of their legislative functions. Unless taken in the act, or within twenty-four hours thereafter, no member of either house may, without the consent of that house, be arrested or submitted to examination for any penal offense. Members of the lower house receive, and must accept, travelling expenses and a daily allowance of fifteen marks during sessions.

At the beginning of each sitting the House of Lords is divided into five Abtheilungen, or sections, and the House of Representatives into seven. In the lower house the division is made by lot; in the upper, by the president. In both instances it is made once for an entire session, not monthly as in France, or bi-monthly as in Italy. The function of the Abtheilungen is to appoint committee members, and, in the lower house, to make preliminary examination of election returns. In each house there are eight standing committees. For the consideration of particular measures special committees are constituted as occasion demands.

**283. Powers.**—The Landtag is, of course, primarily a legislative institution. But the powers of independent deliberation which it exercises are distinctly inferior to those exercised by the British House of Commons, by the French Chamber of Deputies, or by any one of a half score of other European parliamentary bodies. This fact arises from the relatively preponderating influence which is exerted by the Government in its proceedings. In theory each chamber possesses the right to initiate legislation; in practice, virtually all bills are introduced by the Government, and the chambers content themselves with discussion and the proposing of amendments. It not infrequently happens that, as in the case of the Electoral Reform Bill of 1910, the lower house so emasculates a measure as to compel the Government to withdraw it. But, speaking broadly, it may be said that the legislative acts of Prussia are projected and formulated by the crown and the ministers and merely ratified by the Landtag. There is still some question as to whether the stipulation that all laws require the assent of the two houses covers, under every circumstance, the appropriation of money. In practice, appropriations are regularly voted in the chambers, and in fact it is required that the budget and all fiscal measures shall be presented first to the lower house and shall be accepted or rejected as a whole by the upper; but during the years immediately preceding the Austrian war of 1866 the Government asserted and exercised the power of collecting and expending the revenues of the state on the basis of

standing laws, thus virtually suspending the legislative appropriating power, and the question has never been finally settled by Prussian jurists as to whether such a thing might not again be done.[1]

On the side of administration the powers of the Landtag are but nominal. Under provisions of the constitution each chamber has a right to present memorials to the king; to refer to the ministers documents addressed to it, and to demand explanations respecting complaints made therein; and to appoint commissions for the investigation of subjects for its own information. The right of interpellation is expressly recognized. But, as has been pointed out, the ministers are not in practice responsible to the legislative chambers, and neither they nor the king himself can be compelled to give heed, unless they so desire, to legislative protests, demands, or censure. Where a parliamentary system does not exist, the influence of the legislative branch upon matters of administration is likely to be confined to the simple assertion of opinion.

## IV. Local Government: Origins and Principles[2]

**284. The Measures of Stein and Hardenberg.**—The origins of the local governmental régime prevailing in the kingdom of Prussia to-day antedate, to some extent, the nineteenth century, but in large part they are to be traced to the period of the Stein-Hardenberg ministries. By the memorable Municipal Edict (*Städt-Ordnung*) of November 19, 1808, Stein set up a complete municipal system, with burgomasters, executive boards, and town councils (all elective), and swept away the oligarchy of the guilds, broadened the franchise, and conferred upon the towns almost complete independence, even in the matter of taxation. An edict of 1831 inaugurated a revival of the right of the central authorities to supervise local taxation and introduced a number of other changes, but, on the whole, the municipal arrangements of the present day are based upon the edict of Stein. More immediately, they rest upon an act of 1853, applied originally only to the six eastern provinces of the kingdom, but eventually extended to the others. Aside from its introduction of the three-class electoral system, and a few other matters, this law follows closely the measure of 1808 and but consolidates and extends pre-existing arrangements.[3] Neither Stein nor Hardenberg

[1] Lowell, Governments and Parties, I., 298.

[2] The judicial system of Prussia, regulated in common with that of the other states by Imperial law, is described in Chapter 11, pp. 241–244. Articles 86–97 of the Prussian constitution deal with the subject of the judiciary, but many of their provisions have been rendered obsolete by Imperial statutes.

[3] The text of the law of 1853 is printed in the appendix of A. W. Jebens, Die Städtverordneten (Berlin, 1905).

touched the constitution of the country communes, but the extension, during the Napoleonic occupation, of the French communal system into all the Prussian territories west of the Elbe prepared the way for the essentially uniform system which was established by the Westphalian and Rhineland Edicts of 1841 and 1845. Edicts of 1807 and 1811 abolished the aristocratic basis of the ancient circles (Kreise), and after 1815 the circle as a unit of local government next above the commune was extended to all the conquered or reconquered territories. The revival of the old provincial organization was begun also in 1815, when the kingdom was divided into ten provinces; and in the same year there were established twenty-six government districts (Regierungsbezirke), two or three within each province, each under the control of one of the government boards (Regierungen) whose creation had been begun in 1808.[1]

**285. The Reforms of Bismarck.**—Throughout the middle portion of the nineteenth century the administrative system, modified but slightly by legislative enactment, continued to present a curious combination of elements which were popular and elements which were narrowly bureaucratic and, in some instances, essentially feudal. Beginning in 1872, Bismarck addressed himself to the task of co-ordinating, strengthening, and to a certain extent liberalizing, the local institutions of the kingdom. The ends at which he aimed principally were the abolition of conditions by which it was made possible for the whole machinery of local government to be captured from time to time by a single social class for its own benefit, and the establishment of a system under which all classes of the population might be admitted to participation in the management of purely local affairs. In the course of the reform which was carried through numerous features of English local institutions were copied with some closeness. In a number of scholarly volumes appearing between 1863 and 1872 the genius of these institutions had been convincingly expounded by the jurist Rudolph Gneist, whose essential thesis was that the failure of parliamentary government in Prussia and the success of it in Great Britain was attributable to the dissimilarity of the local governmental systems of the two countries;[2] and by these writings the practical proposals with which Bismarck came forward were given important theoretic basis. Neither Gneist nor Bismarck sympathized with the ideals of democracy, but

[1] E. Meier, Die Reform der Verwaltungsorganisation unter Stein und Hardenberg (Leipzig, 1881).

[2] The most important of Gneist's works in this connection are: Geschichte des self-government in England (1863); Verwaltung, Justiz, Rechtsweg (1867); Die preussische Kreis-Ordnung (1871); and Der Rechtsstaat (1872).

both believed that the local administrative authorities should be made to include not only a paid, expert bureaucracy but a considerable element of unpaid lay or non-official persons, drawn, however, principally from the large landowners and taxpayers. The obstacles to be overcome, arising from public indifference, the opposition of the existing bureaucracy, the apprehensions of the Conservatives, and sectional differences and antipathies, were enormous, but by proceeding slowly and in a conciliatory spirit the Government was able eventually to execute the larger portion of its plans. The first enactments, for the circles in 1872 and for the provinces in 1875, were applied only to those provinces which had formed the old monarchy, but during the ensuing ten years similar measures were extended to the remainder of the kingdom, and, finally, after the dismissal of Bismarck, the task was rounded out by a great Landgemeinde-Ordnung issued for the seven eastern provinces in 1891. By this series of enactments the administrative methods and machinery of the kingdom were reduced to substantially the character which they to-day possess.

**286. Principles of the Administrative System.**—Although the system is still one of the most complicated in Europe, it is infinitely simpler than once it was, and the bureaucratic forces in it, if still predominant, have been subjected to a variety of important restraints. The principles which underlie it have been summarized by an English writer as follows: "The first is the careful distinction drawn between those internal affairs in which the central government is thought to be directly concerned, and those which are held to be primarily of only local interest. The former group includes, besides the army, the state taxes and domains, ecclesiastical affairs, police (in the wide Prussian meaning of the term), and the supervision of local authorities; whilst roads, poor relief, and a number of miscellaneous matters are left to the localities. These two groups are kept carefully separate, even when they are entrusted to the same authority. Secondly, the work of the central government is 'deconcentrated,' that is, the country is divided into districts (which may or may not be co-incident with the areas of local self-government), in each of which there is a delegation of the central authority, doing its work, and thereby lessening the pressure upon the departmental offices in Berlin. Something like this deconcentration is found in the educational organization of France, and also in the office of the Prefect, but it is far more elaborate, and the machinery much more complex, in Prussia. Thirdly the comparative independence of the executive from the deliberative authority, and the predominance of the officials, which characterize the central government of Prussia, repeat themselves throughout the

whole of local government. And, finally, in all except the largest of the Prussian areas of local self-government, the executive agents of the locality, elected by it, are also the representatives of the central government; as such they are members of the bureaucracy and controlled by it, and in consequence they naturally look to the center for guidance and direction in regard to local affairs. Therefore, whilst it would be inaccurate to say that local self-government, as understood in England, does not exist in Prussia, it is true that self-government there is weak, that it is not so much the exercise of the will of the locality within limits prescribed (for the protection of the whole community) by the central power, as the exercise of the will of the latter by the locality. In fact, the bureaucracy rules; and it is fortunate for Prussia that hitherto the bureaucracy has remained intelligent and respective of new ideas." [1]

At the same time it is to be observed that, while the professional, life-long holders of office continue to preponderate as in no other important country of western Europe, the class of non-professionals is large and constantly increasing. As a rule, the first class is salaried, the second is not; the non-professionals being simply citizens who, moved by considerations of a civic and social nature, give their services without prospect of pecuniary reward. The principle of the system is, as Ashley characterizes it, that of government by experts, checked by lay criticism and the power of the purse, and effectively controlled by the central authorities. And, although the details of local governmental arrangements vary appreciably from state to state, this principle, which has attained its fullest realization in Prussia, may be said to underlie local government throughout the Empire in general.

## V. Local Government: Areas and Organs

**287. The Province.**—Aside from the cities, which have their special forms of government, the political units of Prussia, in the order of their magnitude, are: (1) the Provinz, or province; (2) the Regierungsbezirk, or district; (3) the Kreis, or circle; (4) the Amtsbezirk, or court jurisdiction; and (5) the Gemeinde, or commune. Of these, three—the first, third, and fifth—are spheres both of the central administration and of local self-government; two—the second and fourth—exist for administrative purposes solely. Of provinces there are twelve: East Prussia, West Prussia, Brandenburg, Pomerania, Silesia, Posen, Westphalia, Saxony, Hanover, the Rhine Province, Schleswig-Holstein,

[1] Ashley, Local and Central Government, 130–132.

and Hesse-Nassau.[1] Unlike the French and Italian departments, the Prussian provinces are historical areas, of widely varying extent and, in some instances, of not even wholly continuous territory. Thus Hanover is, geographically, the kingdom once united with the crown of Great Britain, Schleswig-Holstein comprises the territories wrested from Denmark in 1864, Saxony is the country taken from the kingdom of Saxony at the close of the Napoleonic wars, and Posen represents Prussia's ultimate acquisition from the Polish partitions of the eighteenth century.

In the organization of the province the separation of functions relating to the affairs of the kingdom (*Staatsgeschäfte*) from those which relate only to matters of a local nature is carried out rigidly. In the circle, as will appear, the two sets of functions are discharged by the same body of officials; in the district, the functions performed are wholly of a national, rather than a local, character; but in the province there are not merely two sets of functions but two entirely separate groups of officials.

**288. Provincial Organs of the Central Administration.**—For the administration of affairs of general interest, such as police, education, and religion, the organs within the province are (1) the Oberpräsident, or chief president, appointed by the king to represent the central government in the management of all such matters as concern the entire province or reach beyond the jurisdiction of a single Regierungsbezirk administration,[2] and (2) the Provinzialrath, a provincial council consisting of, besides the Oberpräsident or his representative as presiding officer, one professional member appointed for an indefinite tenure by the Minister of the Interior and five ordinary citizen members elected, usually for a term of six years, by the provincial Ausschuss, or committee. The Oberpräsident is the immediate agent of the ministry, as is the prefect in France, though he is a more dignified and important functionary than his French counterpart. None the less, by virtue of the fact that most of the Oberpräsident's acts are valid only after having been accorded the assent of a body the majority of whose members are chosen within the province, the bureaucratic aspect of his position is subjected to a highly important limitation.

**289. Provincial Organs of Self-Government.**—By the side of this official group stands another, quite independent of it, for the control of affairs of purely local concern. Its organs comprise: (1) the Provinzialausschuss, or provincial committee, consisting of from seven to

[1] For all practical purposes the city of Berlin and the district of Hohenzollern form each a province. If they be counted, the total is fourteen.

[2] Schulze, Das Staatsrecht des Königreichs Preussen, 63.

fourteen members elected for six years by the provincial Landtag, not necessarily, but almost invariably, from its own membership; (2) a Landeshauptmann or Landesdirektor, a salaried executive official elected by the Landtag for six or twelve years and confirmed by the crown; and (3) the Provinziallandtag, or provincial assembly. The Landeshauptmann is the executive, the Provinzialausschuss the consultative, organ of local self-administration; the Provinziallandtag is the provincial legislature. Members of the Landtag are elected for six years (one-half retiring every three years) by the diets of the circles, and they comprise, as a rule, local administrative officials of the circles, large landowners, and other well-to-do persons. Sessions are convoked by the crown at least every two years.[1] The Landtag's functions are comprehensive. They include the supervision of charities, highways, and industry; the voting of local taxes and the apportionment of them among the circles; the enactment of local laws; the custody of provincial property; the election of the Landeshauptmann and the members of the provincial committee; and the giving of advice on provincial matters at the request of the central government. The Landtag is in practice less independent, however, than this enumeration of powers might seem to imply. All of its legislation requires the assent of the king; most of its fiscal arrangements must be submitted to one or more of the ministers; and the body itself may be dissolved at any time by the crown.

**290. The Government District.**—Each province is divided into a number of Regierungsbezirke, or districts, of which there are now thirty-five in the kingdom.[2] Unlike the province, the district exists for purposes of general administration only. It therefore has no organs of self-government. Its Regierung, or "administration," consists of a body of professional, salaried officials, appointed by the crown and having at its head the Regierungspräsident, who is, on the whole, the most important official in the Prussian local service. The subjects that fall within the jurisdiction of the functionaries of the district, including taxation, education, religion, forests, etc., are very comprehensive, and the work of administration is carried on chiefly through "colleges," or boards. For the management of police and the supervision of local bodies there exists a Bezirksausschuss, or district committee, composed of the Regierungspräsident,

[1] Towns of twenty-five thousand inhabitants or more may, by ministerial decree, be set off as separate circles. In such circles Landtag members are chosen by the municipal officials.

[2] The province of Schleswig-Holstein, however, contains but a single district. The largest number of districts in a province is six, in Hanover.

two other persons appointed by the crown, and four members elected by the Provinzialausschuss for six years. A very important function which this body has possessed since 1883 is that of sitting, under the presidency of one of its members appointed for his judicial qualifications, as the administrative court of the district.[1]

**291. The Circle.**—In the Kreis, or circle, as in the province, there exist two sharply distinguished sets of governmental functions, the general and the local; but for the administration of both there is a single hierarchy of officials. The number of circles within the kingdom is about 490, with populations varying from 20,000 to 80,000. Each includes all towns lying within it which have a population of less than 25,000. A town of over 25,000 is likely to be created, by ministerial order, a circle within itself, in which case the functions of government are exercised by the municipal authorities.[2] The essential organs of government within the Landkreise, or country circles, are three: the Landrath, the Kreisausschuss, and the Kreistag. The Landrath is appointed for life by the crown, on nomination frequently by the Kreistag, or diet. He superintends all administrative affairs, general and local, within the circle; fulfills the functions of chief of police; presides over the Kreisausschuss and Kreistag; and, in general, occupies within the circle the place occupied within the province by the Oberpräsident. Associated with him, and organized under his presidency, is the Kreisausschuss, or circle committee, composed of six unofficial members elected by the Kreistag for six years. In addition to its consultative functions, the Kreisausschuss sits as an administrative court of lowest grade.

The Kreistag is the legislative body of the circle. Its members, numbering at least twenty-five, are elected for a term of six years by three Verbände, or colleges, the first being made up of the cities, the second of the large rural taxpayers, the third of a complicated group of rural interests in which the smaller taxpayers and delegates of the communal assemblies preponderate.[3] The Kreistag is a body of substantial importance. It chooses, directly or indirectly, all the elective officials of the circle, of the district, and of the province; it creates local officers and regulates their functions; it enacts legislation of a local nature; and it votes the taxes required for both its own and the provincial administration.

[1] The immediate legal basis of the organization of the district is the Landesverwaltungsgesetz of 1883.

[2] Approximately one hundred towns have been so constituted.

[3] For a fuller statement of the electoral system see Lowell, Governments and Parties, I., 325.

**292. The Commune.**—The smallest of Prussian governmental units is the Gemeinde, or commune.[1] Of communes there are two distinct types, the rural (Landgemeinde) and the urban (Stadtgemeinde). The governments of the rural communes (some 36,000 in number) are so varied that any general description of them is virtually impossible. They rest largely upon local custom, though reduced at some points to a reasonable uniformity under regulating statutes such as were enacted for the communes of eight of the twelve provinces in the Landgemeinde-ordnung of 1891.[2] There is invariably an elective Schulze, or chief magistrate. He is assisted ordinarily by from two to six aldermen (Schöffen) or councillors. And there is generally a governing body (Gemeindevertretung), composed of elected representatives, when there are as many as forty qualified electors,—otherwise the people acting in the capacity of a primary assembly (Gemeindeversammlung),—for the decision of matters relating to local schools, churches, highways, and similar interests. It is to be observed, however, that most of the rural communes are so small that they have neither the financial resources nor the administrative ability to maintain a government of much virility. Such action as is taken within them is taken almost invariably with the approval of, and under the guidance of, the authorities of the circle, principally the Landrath.[3]

In their governmental arrangements the urban communes exhibit more uniformity than do the rural, though occasionally among them

[1] The Amtsbezirk is essentially a judicial district. See p. 243. In the eastern provinces it is utilized also for purposes of police administration.

[2] For an annotated edition of this important instrument see F. Keil, Die Landgemeinde-ordnung (Leipzig, 1890).

[3] On Prussian local government see Lowell, Governments and Parties, I., 308–333; F. J. Goodnow, Comparative Administrative Law (2d ed., New York, 1903), I., 295–338; and Ashley, Local and Central Government (London, 1906), 125–186, 263–287. Fuller accounts are contained in Schulze, Das preussische Staatsrecht, I., 436–538; K. Stengel, Organisation der preussischen Verwaltung, 2 vols. (Berlin, 1884); C. Bornhak, Preussisches Staatsrecht, 3 vols. (Freiburg, 1888–1890). and Hue de Grais, Handbuch der Verfassung und Verwaltung in Preussen, etc. (17th ed., Berlin, 1906). Texts of local government acts are printed in G. Anschutz, Organisations-gesetze der innern Verwaltung in Preussen (Berlin, 1897). The best description in English of Prussian municipal government is that in Munro, The Government of European Cities, 109–208. A good brief sketch is Ashley, Local and Central Government, 153–164. The best account of some length in German is H. Kappleman, Die Verfassung und Verwaltungs-organisation der preussischen Städte, in Schriften des Vereins für Sozialpolitik (Leipzig, 1905–1908), vols. 117–119. Mention may be made of A. Shaw, Municipal Government in Continental Europe (New York, 1895), Chaps. 5–6; E. J. James, Municipal Administration in Germany (Chicago, 1901); and Leclerc, La Vie municipale en Prusse, in *Annales de l'École Libre des Sciences Politiques*, Oct., 1888. For ample bibliography see Munro, *op. cit.*, 389–395.

there is wide variation. The usual organs comprise (1) the Stadtrath, an executive body consisting of a burgomaster and a number of assistants, elected for six, nine, or twelve years, or even for life, and (2) the Stadtverordnete, or municipal council, chosen for from three to six years, as a rule by an electorate identical with that which returns the members of the lower branch of the Prussian Landtag.

## CHAPTER XIV

### THE MINOR GERMAN STATES—ALSACE-LORRAINE

**293. Essential Similarity of Political Institutions.**—The preponderance of Prussia among the twenty-five states comprised within the German Empire is such as to lend the governmental system of that kingdom an interest and an importance which attaches to the political arrangements of no one of the remaining members of the federation. No description of German governments would be adequate, none the less, which should ignore wholly the minor states. A number of these states, especially Bavaria, Baden, Württemberg, and Saxony, are of considerable size, and the populations which are governed within them approximate, or exceed, the populations of certain wholly independent European nations, as Norway, Denmark, Switzerland, Portugal, and several of the states of the southeast. It would be unnecessary, however, even were it possible, to describe in this place twenty-five substantially independent German governmental systems. Despite no inconsiderable variation, there are many fundamental features which they, or the majority of them, possess in common. All save three—Hamburg, Bremen, and Lübeck—are monarchies. All save two—Mechlenburg-Schwerin and Mechlenburg-Strelitz—have written constitutions [1] and elective legislative chambers. In every one of the monarchies the total lack of anything in the nature of ministerial responsibility to a parliamentary body leaves the way open for the maintenance of vigorous and independent royal authority, and it is not too much to say that in all of them, as is pre-eminently true in Prussia, the principle of autocracy lies at the root of both the organization and the methods of government. Local governmental arrangements and systems of administration of justice have been copied, in most instances, from Prussia. It will suffice to speak very briefly, first of a few of the more important monarchies, and subsequently of the city-state republics.

[1] The texts of these constitutions, in the form in which they existed in 1884, are printed in Stoerk, Handbuch der deutschen Verfassungen. Even in the Mecklenburgs there are certain written instruments by which the curiously mediæval system of government there prevailing is in a measure regulated.

## I. The More Important Monarchies

**294. Bavaria: Crown and Ministry.**—After Prussia, the most important of the German states, in point both of area and of population, is the kingdom of Bavaria. The constitution at present in operation in Bavaria was promulgated May 26, 1818, though it has undergone no slight modification through the process of amendment since that date.[1] The original instrument replaced a fundamental law of May, 1808, devised by the king of Bavaria in imitation of the constitution given some months before by Napoleon to the kingdom of Westphalia; and even the present frame of government bears unmistakable evidence of French influence. The functions and prerogatives of king and ministers are substantially what they are in Prussia.[2] In addition to the Ministry of State, consisting of the seven heads of departments, there is an advisory Staatsrath, or Council of State, comprising, besides the ministers, one prince of the royal blood and eight other members. In accordance with royal proclamation important acts of the government require the counter-signature of all of the ministers. This, of itself, does not imply any larger measure of ministerial subordination than exists elsewhere in German governments, but it is worth observing that during a prolonged period, especially after 1869, there was persistent effort on the part of the Clericals to inject into the Bavarian system the principle of ministerial responsibility in the parliamentary sense of the phrase, and that although the attempt was by no means wholly successful, it is true that in Bavaria the ministers occupy in practice a somewhat less independent position than in other German monarchies. The device of interpellation, for example, not only exists in theory; it means something, as elsewhere in Germany it does not, in actual operation. If a minister will not answer an interpellation that is addressed to him, he is obliged by law at least to give reasons for his refusal.[3]

**295. The Bavarian Landtag.**—The Landtag of Bavaria consists of two chambers. The upper, designated officially as the Kammer der Reichsrate ("chamber of the council of the Empire"), is com-

[1] Among amendments the most notable have been that of March 9, 1828, relating to the composition of the upper legislative chamber; those of June 4, 1848, and March 21, 1881, by which was modified the composition of the lower house; and that of April 8, 1906, whereby direct elections were substituted for indirect.

[2] The crown is hereditary in the house of Wittelbach, by which it was acquired as early as 1180. From 1886, the king, Otto I., being insane, the powers of the sovereign were exercised by the prince regent Luitpold, until his death December 12, 1912.

[3] Lowell, Governments and Parties, I., 338.

posed of princes of the royal family, crown dignitaries, high ecclesiastics, hereditary nobles, and life members appointed by the crown—in all, some eighty-five to ninety persons. The lower chamber, or Abgeordnetenkammer, consists of 163 members. By law of 1881 the class system of voting in Bavaria was replaced by an equal suffrage extended to all males paying a direct tax. Elections continued to be indirect until 1906, when provision was made for elections by direct and secret ballot.[1] Deputies are chosen for a term of six years and are apportioned in such a manner that, normally, there is one for every 38,000 people. Every male inhabitant is entitled to vote who at the time of the election has completed his twenty-fifth year, has been a Bavarian citizen during at least one year, and has paid to the state a direct tax during at least the same period. The Landtag must be summoned not less frequently than once every three years.[2] The budget is made up on a two-year basis, so that sessions are held, in point of fact, biennially.

**296. Saxony: Crown and Ministry.**—Third among the states of the Empire in population, though fifth in area, is the kingdom of Saxony. The present Saxon constitution was promulgated September 4, 1831, under the influence of the revolutionary movements of 1830. By it a monarchy governed under a mediæval system of estates was converted into a monarchy governed, at least nominally, under a modern representative régime. In point of fact, however, the inauguration of constitutionalism tempered the actual authority of the monarch very slightly. The king is still in every sense the supreme authority within the state.[3] He appoints and dismisses ministers at will, issues ordinances with the force of law, and exercises far-reaching control over the processes of legislation. Upon the failure of the chambers to vote supplies which are held to be essential, he may even collect and expend revenues for a year on no authority apart from his own. For purposes of administrative supervision there are ministers of War, Finance, Justice, Foreign Affairs, the Interior, and Education, and the ministers collectively comprise a Gesammt-Ministerium, or ministry of state. Measures of the crown are countersigned by a

[1] Grassman, Die bayerische Landtagswahlgesetz vom 8 April, 1906, in Jahrbuch des Oeffentlichen Rechts der Gegenwart, I., 242. A law of April 15, 1908, introduced the principle of proportional representation in Bavarian municipal elections.

[2] M. von Seydel, Das Staatsrecht des Königreichs Bayern, (Freiburg, 1888), in Marquardsen's Handbuch; E. Junod, La Bavière et l'Empire allemande, in *Annales de l'École Libre des Sciences Politiques*, Apr. 15, 1892.

[3] The crown is hereditary in the Albertine line of the house of Wettin, with reversion to the Ernestine line, of which the duke of Saxe-Weimar is now the head. The present sovereign is Frederick August III.

minister; but there is no means by which a minister may be forced out of office against the will of the king by a hostile legislative chamber.

**297. The Saxon Legislative Chambers.**—The Saxon legislature (Standeversammlung) consists of two houses. The upper, designated simply as the First Chamber, is a composite body consisting of forty-six members, in addition to a variable number of adult princes of the royal house. The membership comprises, principally, (1) important prelates; (2) certain university officials; (3) proprietors of great estates, twelve elected and ten appointed by the crown for life; (4) the first magistrates of Dresden and Leipzig; (5) six burgomasters of other cities, designated by the king; and (6) five nobles named for life by free choice of the king. The lower house consists of ninety-one deputies, of whom forty-three are elected by the towns and forty-eight by the rural communes. At one time members were chosen by direct secret ballot under a general and equal suffrage based upon a small tax qualification. Fear of socialism led, however, to the adoption, in 1896, of a new system under which the tax qualification was retained, indirect elections were substituted for direct and public voting for the secret ballot, and a three-class scheme was brought into operation which threw political preponderance into the hands of the well-to-do scarcely less effectively than does the three-class arrangement in Prussia.

After prolonged agitation the reactionary measure of 1896 was replaced by a comprehensive electoral law of May 5, 1909 by which direct and secret voting was re-established and the interests of property were sought to be safeguarded by a newly devised system of plural votes. As the law now stands (1) all males who have attained the age of twenty-five and who pay direct taxes are entitled to one vote; (2) men owning two hectares of land, or paying a tax upon an annual income of 1,250, 1,400, or 1,600 marks, according, respectively, as such income is drawn from land, public office, or general sources, and men who have passed certain examinations, are entitled to two votes; (3) voters paying taxes yearly, as above, upon an income of 1,600, 1,900, or 2,200 marks, or who possess four hectares of land, or who as teachers, engineers, artists, or writers earn an income of 1,900 marks, possess three votes; (4) persons paying a tax, as above, on an income of 2,200, 2,500, or 2,800 marks, or owning eight hectares of land, have four votes; and (5) every person belonging to the first, second, or third of these classes is allotted an additional vote when he attains the age of fifty, the total number of votes possessed by one elector never exceeding four. Curiously enough, at the first elections held under

this law, in October, 1909, the socialists, who previously were represented by but a single member, gained twenty-five seats, or upwards of a third of the entire number. The chambers must be summoned by the king at least once in two years. Both may propose measures, but in practice leadership in the business of legislation is left very largely to the king and ministry.[1]

**298. Württemberg: Crown and Ministry.**—The constitution of the kingdom of Württemberg was promulgated, following prolonged political controversy, September 25, 1819. At the head of the state is the king, whose powers are in some respects even larger than those belonging to other German sovereigns.[2] It is required that all political acts, except the bestowing of titles of nobility, shall be performed only with the sanction in writing of a minister; but, by reason of the king's absolute control of the ministry, this constitutes no invasion of the crown's essential prerogative. Of ministers there are six. These collectively comprise the Ministry of State, and they, together with certain appointive councillors, likewise constitute the Geheimerrath, or Privy Council, which the sovereign consults at pleasure.

**299. The Assembly of Estates: Proportional Representation.**—The legislative body of Württemberg is known as the Ständeversammlung, or Assembly of Estates. The upper chamber,—the Standesherren, or House of Lords,—consists of princes of the royal family; other princes, under varying conditions; knights; ecclesiastical dignitaries; and members appointed by the crown, in part according to stipulated conditions and in part without reference to any necessary consideration of birth, wealth, or religious affiliation. The Abgeordnetenhaus, or House of Deputies, consists of ninety-two members chosen for a term of six years, as follows: one from each of the administrative divisions (Oberamtsbezirke); six from Stuttgart and one from each of six other important towns; nine from the Neckar and Jagst circle; and eight from the Black Forest and Danube circle. Election is by direct and secret ballot, on a basis of universal suffrage for males over twenty-five years of age. By constitutional amendment of July 16, 1906, there was introduced a scheme of proportional representation under which the six deputies of Stuttgart and the seventeen of the Neckar and Jagst and the Black Forest and Danube circles are distributed among the several political groups in approximate proportion to the numerical strength attained by these groups at the polls. This system, an innovation in Germany, was tested in the elections of December, 1906, and January, 1907, and was by most persons adjudged satisfac-

[1] O. Mayer, Das Staatsrecht des Königreichs Sachsen (Tübingen, 1909).

[2] The reigning sovereign is William II.

tory.[1] The remaining sixty-nine representatives are chosen still in single member districts. Prior to the amendment of 1906, the chamber was made up of seventy members chosen popularly and of twenty-three who sat as representatives of privileged or corporate interests—thirteen chosen by the landowning nobility, nine dignitaries of the Protestant and Catholic churches, together with the Chancellor of the University of Tübingen.[2]

**300. The Government of Baden.**—In July, 1808, a constitutional edict was promulgated in Baden in imitation of the fundamental law which Napoleon in the previous year had bestowed upon the kingdom of Westphalia. August 22, 1818, this instrument was replaced by the constitution at present in operation. Executive power is vested in the grand-duke, with the customary provision for ministerial countersignature. Legislative power is shared by the monarch with a Landstände of two houses. Under a liberalizing law of August 24, 1904, the upper chamber consists of princes of the reigning family, nobles occupying hereditary seats, members appointed for four years by the grand-duke, and representatives of a variety of ecclesiastical, educational, and other corporate interests. The lower house is composed of seventy-three representatives elected for four years (twenty-four by the towns and forty-nine by the rural districts) by male citizens over twenty-five years of age. Direct election was substituted for indirect in 1904. Half of the membership of the lower chamber is renewed every two years. In Baden there has been rather more progress than in the majority of German states toward liberal and responsible government.[3]

## II. The Lesser Monarchies and the City Republics

**301. Monarchical Variations.**—With relatively unimportant exceptions, the governments of the remaining seventeen German monarchies exhibit features substantially similar to those of the govern-

[1] J. Fontaine, La représentation proportionnelle en Württemberg, in *Revue Politique et Parlementaire*, Jan., 1911; ibid., La représentation proportionnelle en Württemberg (Paris, 1909).

[2] G. Combes de Lestrade, Monarchies de l'Empire allemand, 181; L. Gaupp, Das Staatsrecht des Königreichs Württemberg (Freiburg and Tübingen, 1884), in Marquardsen's Handbuch; W. Bazille, Das Staats- und Verwaltungsrecht des Königreichs Württemberg (Hanover, 1908), in Bibliothek des Oeffentlichen Rechts der Gegenwart. The monograph of Gaupp, revised by him in 1895 and by K. Göz in 1904, has been re-issued as essentially a new volume by Göz (Tübingen, 1908).

[3] Lowell, Governments and Parties, I., 345; K. Schenkel, Das Staatsrecht des Grossherzogthums Baden (Freiburg and Tübingen, 1884), in Marquardsen's Handbuch.

ments that have been described. In each of the states, except the two grand-duchies of Mecklenburg-Schwerin and Mecklenburg-Strelitz, there is a written constitution, promulgated, in most instances, during the second or third quarter of the nineteenth century.[1] Executive power in each is vested in the monarch; legislative power in the monarch and a Landtag, or assembly. The assembly consists ordinarily of a single chamber, varying in membership from twelve to forty-eight; and in most instances the members are chosen, at least in part, on a basis of manhood suffrage. In some states, as the principality of Lippe, the three-class electoral system prevails; and elections are still very commonly indirect. The trend toward liberalism is, however, all but universal, and within recent years numbers of important changes, e. g., the substitution of direct for indirect elections in Oldenburg and in Saxe-Weimar in 1909, have been brought about. In the curiously intertwined grand-duchies of Mecklenburg the common Landtag remains a typically mediæval assemblage of estates, based, in the main, on the tenure of land.[2]

**302. Hamburg.**—The three free cities of Hamburg, Bremen, and Lübeck are survivals of the ancient Hanseatic League. All have republican forms of government, differing in only minor details. The constitution of Hamburg came into operation January 1, 1861, and was revised in 1879 and in 1906. The principal organs of government are the Senate and the Bürgerschaft, or House of Burgesses. The Senate consists of eighteen members elected for life by the House of Burgesses, but in accordance with an indirect method so devised that the Senate itself exercises a preponderating influence in the elections.

[1] The dates of the original promulgation of constitutions at present in operation are: Saxe-Weimar, 1816; Hesse, 1820; Saxe-Meiningen, 1829; Saxe-Altenburg, 1832; Brunswick, 1832; Lippe, 1836; Oldenburg, 1852; Waldeck, 1852; Saxe-Coburg-Gotha, 1852; Reuss Jüngerer Linie, 1852 and 1856; Schwartzburg-Rudolstadt, 1854; Schwartzburg-Sonderhausen, 1857; Anhalt, 1859; Reuss Älterer Linie, 1867; and Schaumburg-Lippe, 1868.

[2] Repeated attempts to bring about a modernization of the Mecklenburg constitutional system have failed. Several times the liberal elements in the Reichstag have carried a proposal that to the Imperial constitution there should be added a clause requiring that in every state of the Empire there shall be an assembly representative of the whole people. On the ground that such an amendment would comprise an admission that the constitutions of the states are subject to revision at the hand of the Empire, the Bundesrath has invariably rejected the proposal. In 1907 the grand-duke of Mecklenburg-Schwerin inaugurated a movement for political reform, and in 1908 there was drafted a constitution providing for the establishment of a Landtag whose members should be chosen in part by the landed, industrial, professional, and official classes and in part by manhood suffrage. Late in 1909 the Ritterschaft (i. e., the estate comprising owners of knights' fees) rejected the proposal, as, indeed, it had rejected similar ones on earlier occasions.

A senator is privileged to retire, if he so desires, at the end of a six-year period, or at the age of seventy. Of the eighteen, half must have studied finance or law, while of the remaining nine at least seven must belong to the class of merchants. The House of Burgesses is composed of 160 members, elected for six years by voters whose qualifications are based upon property, tax-paying, or position. An electoral law of March 5, 1906, introduced the principle of proportional representation, but failed to break the dominance of the well-to-do classes in the chamber. Half of the membership is renewed triennially. The service is unpaid and, under ordinary circumstances, compulsory.

The larger portion of the executive authority is vested in the Senate. After the fashion of the prince of a monarchical state, this body appoints officials, designates and instructs the delegate in the Bundesrath, issues ordinances, and supervises administration.[1] One senator is placed at the head of each of the nine executive departments. In matters of legislation the powers of the Senate and of the Bürgerschaft are concurrent. Both bodies possess the right of legislative initiative, and all laws, treaties, and fiscal arrangements must receive the assent of both. The lower chamber elects and maintains a Bürgerausschuss, or Committee of the Burgesses, consisting of twenty-five members, whose business it is to watch over the proceedings of the Senate and the administration of the laws. The sessions of both Senate and Bürgerschaft are irregular but frequent.

**303. Lübeck and Bremen.**—The government of Lübeck rests upon a constitution proclaimed December 30, 1848, but revised in later years upon a number of occasions. The system is essentially similar to that in operation in Hamburg, the principal differences being that in Lübeck the full membership of the Bürgerschaft (120) is elected by the citizens directly and that the Bürgerausschuss, of thirty members, performs larger and more independent functions. The constitution of Bremen dates from March 5, 1849, but was revised in 1854, 1875, and three times subsequently. As in Lübeck, the Bürgerschaft, of 150 members, is elected by all of the citizens, but under a class system according to which citizens who have studied at a university return fourteen members; the merchants, forty; the mechanics and manufacturers, twenty; and all other citizens who have taken the burgher oath, the remaining seventy-six. The Senate consists of fourteen members.

[1] The presiding officer of the Senate is a burgomaster, chosen for one year by the senators from their own number. The burgomaster as such, however, possesses no administrative power.

## III. Alsace-Lorraine

**304. Original Problem of Organization.**—By the terms of the Peace of Frankfort, May 10, 1871, France ceded to Germany the province of Alsace and a portion of that of Lorraine—an aggregate of 5,605 square miles of hotly disputed territory whose population, while in considerable measure German, was none the less predominantly French. The position assigned the newly acquired territory within the Empire was anomalous. It was determined by two principal considerations: first, the fact that the districts comprised conquered territory inhabited by a discontented people and liable both to domestic disorder and foreign invasion; and, second, the further fact that the newly established Empire consisted of a federation of semi-autonomous states, into which subordinate territory acquired by war could not easily be made to fit. The annexed lands might conceivably have been erected, in 1871, into the twenty-sixth state of the Empire; but in no quarter was this policy so much as suggested. They might have been incorporated with one of the existing states, or divided among two or more of them; but this would have involved friction at a time when the stability of the new régime was not yet assured. The only course that to the statesmen and jurists of the day appeared feasible was to hold the new territories as the joint property of the states, under the sovereign control of the Imperial Government; and the arrangement hit upon in the execution of this policy was perpetuated, with modification only of administrative machinery, from 1871 until almost the present day.

**305. The Imperial Basis of Government.**—Prior to the enactment of the controverted Alsace-Lorraine Constitution Bill of 1911 Alsace-Lorraine was not a member of the German federation, but was, on the contrary, a mere dependency—a Reichsland, or Imperial territory. Beginning with a virtual dictatorship on the part of the Emperor, established under act of June 9, 1871, the governmental arrangements within the territory passed through a number of stages of elaboration. In the main, the organs of government employed until 1911, and a large proportion of those still in operation, were created, or perpetuated, by the constitutional statute of July 4, 1879. By this instrument the sovereignty of the territories was vested specifically in the Empire; the exercise of that sovereignty was vested in the Kaiser, acting alone or in conjunction with the Bundesrath. The Kaiser was represented personally at Strassburg, as he still is, by a Statthalter, or governor-general, whose powers were such as the

Emperor might from time to time intrust to him. At Strassburg also was a ministry, with a secretary of state at the head, and with under-secretaries, appointed by the Kaiser, in charge of four departments; likewise a council of state, which was a purely advisory body made up of the secretary and under-secretaries, certain judicial officials, and from eight to twelve members specially appointed by the Kaiser for a term of three years.

**306. The Landesausschuss.**—Such privileges of self-government as were possessed by the inhabitants of the territory arose from the peculiar and complicated arrangements which were devised for legislation. In 1874 an Imperial decree called into being a Landesausschuss, or Territorial Committee. This body consisted originally of thirty members—ten elected in each of the three districts of Upper Alsace, Lower Alsace, and Lorraine. Its function at the outset was merely to give expert advice on subjects pertaining to local legislation and taxation. By law of 1877, however, it was intrusted with power to initiate legislation in matters pertaining solely to the territory. Measures of any sort designed for Alsace-Lorraine exclusively were enabled to be carried through by enactment in the Territorial Committee, provided they received the assent of the Bundesrath and were duly promulgated by the Emperor. The Committee was enlarged until it consisted of fifty-eight members, thirty-four of whom were elected by the assemblies of the three districts from their own membership, four others being chosen by the communal councils of Strassburg, Metz, Kolmar, and Mülhausen, and twenty elected by indirect suffrage from the twenty-three circles into which the territories were divided.

**307. Legislative Processes.**—Several conditions, however, operated to impose upon what might appear a fairly liberal system some very serious limitations. In the first place, there was no possibility of legislation which was wholly within the control of the inhabitants of the territory. The laws applicable solely to Prussia are made exclusively in Prussia, by Prussian authorities, and in like manner those of every other one of the confederated states. But those of Alsace-Lorraine, while they might be enacted in a provincial legislative chamber, acquired no validity until they should have been approved by the Empire through its agents, the Bundesrath and the Kaiser. In the second place, the method of legislation which has been mentioned did not occupy the field alone. With insignificant exceptions, any measure which might be enacted in the fashion described might be enacted in either of two other ways, in neither of which did the inhabitants of the territory have any appreciable influence. A measure might take the form of

a simple decree of the Kaiser with the consent of the Bundesrath and Reichstag; or, in the case of an ordinance having the provisory force of law, it might be promulgated by the Kaiser with the consent of the Bundesrath alone. The fact that in practice the Territorial Committee ordinarily did participate in the legislative process was largely offset by the exceeding cumbersomeness and indirectness of the system. The normal procedure in the making of a law for the territory involved at least eight steps; (1) the *projet* was drawn up by the Statthalter; (2) it was approved by the Council of State at Strassburg; (3) it was transmitted, through the Imperial Chancellor, to the Kaiser; (4) if he approved, it was sent to Strassburg to receive the Statthalter's counter-signature; (5) it was laid before the Bundesrath, the members of which, being but delegates, ascertained from their respective sovereigns how they should vote; (6) if all had gone well, the Territorial Committee, at Strassburg, passed the measure through the usual three readings; (7) it was returned to the Bundesrath again to be approved; and (8) it was promulgated by the Emperor—provided he did not see fit to veto and withhold it, as he had an entire right to do. Even if such roundabout law-making were to be considered in itself satisfactory there remained the disquieting condition that the Territorial Committee rested on no basis more substantial than a body of Imperial decrees capable at any time of being altered, or even revoked. Not merely was it altogether lacking in the independence of action enjoyed by the diets of the federated states; its very existence was precarious.

**308. The Movement for Autonomy.**—Throughout a prolonged period there was in the territory insistent demand for the grant of a more independent status, to involve the eventual placing of Alsace-Lorraine on a footing of constitutional equality with Saxony, Bavaria, and the other confederated states. Within very few years after the annexation there sprang up, within the Territorial Committee first of all, a group of "autonomists," led by the secretary of state Baron Zorn von Bulach, who insisted in season and out upon statehood for the conquered territory, and within a decade the campaign gained momentum until it enlisted the support of men of all political faiths and became the principal rallying issue of Alsatian sentiment and enthusiasm. Until within recent years the tension of the international situation was alone sufficient to restrain the Imperial Government from according the demand favorable consideration. With the passing of time the danger of international conflict in which Alsace-Lorraine should be involved was, however, perceptibly diminished, and the way was to this extent cleared for a readjustment of the territory's anomalous status on the merits of the purely administrative and constitutional questions involved.

The programme of the autonomists, as it finally assumed shape, embraced four fundamental points: (1) the elevation of Alsace-Lorraine to membership in the German Empire, with all the rights and immunities commonly possessed by existing members; (2) the vesting of the executive authority in an independent head of the state, whether a king of a newly established line, a regent appointed for life, or even a president of a republic; (3) the establishment within the state of a full-fledged legislative body, with powers equivalent to those exercised by the Landtags of the existing states; and (4) the elimination of Kaiser, Bundesrath, and Reichstag from all legislation which concerns Alsace-Lorraine exclusively. Taking their stand on the situation as it was, and accepting the union with Germany with such grace as they could muster and assuming that it is to be permanent, the exponents of autonomy proposed to make the best of a state of things not of their choosing.

**309. The Government Bill of 1910.**—Under pressure of persistent public demand, the Imperial Government prepared an elaborate measure upon the subject, which, after having been approved by the Bundesrath, was submitted to the Reichstag, December 17, 1910. Although Chancellor von Bethmann-Hollweg had declared unreservedly for reform, the Government's proposals fell far short of the demands of the autonomist leaders. The cardinal features of the Imperial programme, were, in brief: (1) Alsace-Lorraine should remain a dependency of the Empire; (2) sovereign authority therein should continue to be exercised by the Kaiser, as the representative of the states, through his accustomed agent, the Statthalter at Strassburg; (3) the legislative functions of the Bundesrath and Reichstag in matters pertaining exclusively to Alsace-Lorraine should be terminated; and (4) such legislation should thereafter be enacted by a bicameral diet at Strassburg. The members of the upper chamber of this diet, not to exceed thirty-six, were in part to sit by *ex-officio* right, but some were to be named by chambers of commerce and other professional and business organizations, and a maximum of one-half might be appointed by the Emperor, on nomination of the Bundesrath. The sixty members of the lower house were to be chosen by manhood suffrage, but electors over thirty-five years of age were to have two votes, and those over forty-five three.

**310. The Bill Amended and Adopted, 1911.**—By those whose object was the procuring of statehood for Alsace-Lorraine, this plan was pronounced inadmissible. It did not alter the legal status of the territory; neither, it was alleged, did it give promise of increased local independence in law-making or administration. Conservatives, on the other hand, objected to the provision which was made for manhood suffrage. After

being debated in the Reichstag the measure was referred to a special committee, by which amendments were reported to the effect that the territory should be created a state of the Empire and the Statthalter should be appointed for life. The second of these amendments the Government refused positively to accept, but it was agreed finally that the territory should be recognized as substantially a state of the Empire, and, as such, should be allowed three votes in the Bundesrath. Since 1879 the Statthalter had been authorized to send to the Bundesrath four "commissioners" who might speak when the subject under consideration touched the affairs of Alsace-Lorraine, but might not vote. Since under the new arrangement the three members representing Alsace-Lorraine were to be appointed and instructed by the Statthalter, who is himself practically the delegate of the king of Prussia, the Bundesrath insisted upon and obtained the special stipulation (1) that the votes of Alsace-Lorraine should not be counted in favor of the Prussian view of any question except when Prussia should be able to procure a majority without such votes and (2) that they should not be counted for or against any proposal to amend the Imperial constitution. The revised bill was passed in the Reichstag, May 26, 1911, and in accordance with a decree of August 26 the new constitution was put in operation September 1.

**311. The Governmental System To-day.**—Supreme executive authority is lodged, as before, in the Emperor. It is exercised, in the main, by the Statthalter, who is appointed by, and holds office at the pleasure of, the Emperor. In the Statthalter are vested all the rights and privileges in Alsace-Lorraine that hitherto have been held and exercised by the Imperial Chancellor. He appoints and instructs the plenipotentiaries in the Bundesrath, and Imperial orders and decrees have legal effect only when signed by him. All laws require the assent of the Emperor and the two chambers of the diet, and the budget of the year must be laid first before the lower chamber and must be accepted or rejected in its entirety by the upper one. The Emperor has the right to summon, to adjourn, and to dissolve the chambers simultaneously. Members of the popular branch are elected by direct and secret ballot and majority vote by all male German citizens twenty-five years of age who have resided in Alsace-Lorraine at least three years; except that a residence of one year qualifies teachers and occupants of official posts. The plural voting proposal contained in the Government bill of 1910 was abandoned. The first chamber elected under the new system—that chosen in October, 1911—contained twenty-five Centre members, eleven Socialists, ten members of the National Alsace-Lorraine group,[1]

[1] The party which had contended most vigorously for Alsatian autonomy.

eight Liberal Democrats, and six Independents. The independent attitude promptly assumed by the body elicited from the Emperor, in May, 1912, a threat that the new constitution might be abrogated and Alsace-Lorraine incorporated with Prussia. The incident provoked a storm of criticism, and, outside the rabid Pan-German press, the Imperial pronouncement was commented upon everywhere adversely.[1]

[1] On the organization of Alsace-Lorraine prior to 1911 see Howard, The German Empire, Chap. 10; Laband, Das Staatsrecht des deutschen Reiches, §§ 67–69; P. Gerber, La condition de l'Alsace-Lorraine dans l'Empire allemand (Lille, 1906), and L'Administration en Alsace-Lorraine, in *Revue du Droit Public*, Oct.–Dec., 1909. On the problem of reform and the legislation of 1911 see R. Henry, La question d'Alsace-Lorraine, in *Questions Diplomatiques et Coloniales*, Feb. 1 and March 16, 1904; P. Braun, Alsace-Lorraine—La réforme de la constitution, ibid., Nov. 16, 1905, and Jan. 1, 1906; Alsace-Lorraine en 1908, ibid., March 1, 1909; Alsace-Lorraine—les préludes d'une lutte nationale, ibid., April 16, 1910; La constitution d'Alsace-Lorraine, ibid., March 16, 1911; A. Wetterlé, L'Autonomie de l'Alsace-Lorraine, in *Le Correspondant*, Aug. 25, 1910, La nouvelle loi constitutionnelle d'Alsace-Lorraine, ibid., June 10, 1911, and Les élections en Alsace-Lorraine, ibid., Nov. 25, 1911; Eccard, L'Autonomie de l'Alsace-Lorraine, in *Revue Politique et Parlementaire*, Nov. 10, 1910; G. Bruck, Die Reform der Verfassung von Elsass Lothringen, in *Annalen des deutschen Reichs*, 1911, I; and P. Heitz, La loi constitutionnelle de l'Alsace-Lorraine du 31 mai, 1911, in *Revue du Droit Public*, July–Sept., 1911, containing French translations of the documents. See also *Annual Register* for 1911, 328–332.

# PART III.—FRANCE

## CHAPTER XV

### CONSTITUTIONS SINCE 1789

### I. A Century of Political Instability

Among European states of the first order there is but a single republic. In Great Britain the conspicuous success with which monarchy has been tempered with democracy has left the partisans of the republican style of government slender ground upon which to stand. Russia has as yet but partially emerged from a political status in which monarchy is both natural and inevitable. Germany and Italy, in days comparatively recent, achieved nationality through processes absolutely conditioned upon monarchical leadership. And it is all but inconceivable that the heterogeneous nationalities of Austria-Hungary should thus long have been held together by any force less tangible and commanding than the personality of a common sovereign. Although in some of these instances the functions ordinarily associated with monarchy are more nominal than actual, the fact remains that in no one of the greater European states, save France, has it as yet been found expedient, or possible, to dispense with royalty as an agency of public authority.

**312. The Multiplicity of Constitutions.**—The chain of circumstances by which the people of France have been brought to their present republican form of government constitutes one of the most remarkable chapters in the history of modern Europe. After centuries of governmental centralization, under conditions which enabled monarchy to do its best, and its worst, there came the gigantic disruption of 1789, inaugurating a series of constitutional changes by which was imparted to the political history of the French nation in the nineteenth century a more unsettled character than that exhibited by the public economy of any other European state. France to-day is governed under her eleventh constitution since the fall of the Bastile. All but one of the eleven have been actually in operation, during a longer or a shorter period. But, prior to the fundamental law at present in effect, no one of these instruments attained its twentieth year. Once having cut loose from her ancient moorings, the nation became through many decades the play-

thing of every current that swept the political sea. It is only within our own generation that she appears definitely to have righted herself for a prolonged and steady voyage. The constitutional system of the Third Republic is a product, not of orderly evolution, but of disruption, experimentation, compromise. It represents a precarious balance which has been struck between those forces of radicalism and conservatism, of progress and reaction, for whose eternal conflict France pre-eminently has furnished a theatre since 1789. Its connection with the remoter past is very much less direct and fundamental than is that of the governmental system of England, Russia, Austria-Hungary, or the Scandinavian states. At certain points, however, as will appear, this connection is vital. And the relation of the constitution of 1871-1875 to the several instruments by which it was more immediately preceded is essential to be observed, because this body of fundamental law comprises but the latest in a series of devices through which France since 1789 has sought orderliness and stability in public affairs. Some of these devices were shaped under the preponderating influence of radical democracy, some under that of monarchical reaction; but all are of interest and importance. For the purpose in hand it will be sufficient to review briefly the principal aspects of the several constitutional systems whose devising or operation has contributed with some directness to the political institutions and experience of the France of to-day.

## II. The Revolutionary and Napoleonic Era

**313. The Constitution of 1791.**—During the decade which elapsed between the outbreak of the Revolution and the establishment of the Consulate there were in actual operation in France two successive constitutions: that of September 3, 1791, which was in effect subverted by the uprising of August 10, 1792, and that of 5 Fructidor of the Year III. (August 22, 1795), terminated by the *coup d'état* of 18 Brumaire of the Year VIII. (November 9, 1799). The instrument of 1791, essentially a compilation of measures voted during the years 1789–1791, was prepared by a committee appointed by the National Assembly, September 15, 1789.[1] It was shaped, in the main, by men who were desirous of preserving the form while destroying the substance of monarchy. At the head of the state was allowed to remain the king, shorn, however, of many of his accustomed prerogatives and obliged to exercise under stringent restraint the few that were left him. "King of the French," he henceforth was to be, "by the grace of God and the

[1] A constitutional committee of five had been appointed the previous July 14; but, its recommendation proving unacceptable to the Assembly, it had resigned, September 11.

will of the nation." The legislative body (*Corps législatif*) was made to consist of a single chamber whose 745 members, chosen for a two-year term according to a system of indirect suffrage, were distributed among the eighty-three newly created departments upon the three-fold basis of extent, population, and contribution of direct taxes.[1] Only male citizens who had attained the age of twenty-five, and whose annual payment of direct taxes was the equivalent of three days' labor, were entitled to participate in the choice of the electors, by whom, in turn, were chosen the deputies. The powers of the legislative body were ample. In respect to measures generally, the king possessed only a suspensive veto; that is to say, any measure passed by three successive legislatures acquired, without the royal sanction, the force of law. Fiscal measures might not be vetoed at all. The king was given no power to prorogue or to dissolve the legislative chamber, and without the assent of that body no proclamation of war, and no treaty, was valid. To it the ministers in charge of the six executive departments were made absolutely responsible. In conformity with prevailing ideas of the sovereignty of the people and the separation of powers, provision was made that all judges should be elected popularly, as also all local administrative authorities.[2]

**314. The Constitution of the Year I. (1793).**—The constitution of 1791 was in operation rather less than a twelvemonth. The *Corps législatif* elected under it, after precipitating war with Austria, gave way before the rising demand for the abolition of monarchy, called into being a constituent convention of 782 members, and voted its own dissolution.[3] September 21, 1792, the Convention met and decreed the abolition of the monarchy and the establishment of a re-

[1] Of the whole number of deputies, 247 were apportioned according to departmental areas and 249 according each to population and tax quotas.

[2] The texts of all French constitutions and fundamental laws since 1789 are printed in several collections, of which the best is L. Duguit et H. Monnier, Les constitutions et les principales lois politiques de la France depuis 1789 (Paris, 1898). Other serviceable collections are F. Hélie, Les constitutions de la France (Paris, 1880) and E. Pierre, Organisation des pouvoirs publics; recueil des lois constitutionnelles et organiques (Paris, 1902). For English versions see F. M. Anderson, The Constitutions and other Select Documents illustrative of the History of France, 1789–1907 (2d ed., Minneapolis, 1908). The various constitutions are excellently summarized in M. Block, Dictionnaire général de la politique, 2 vols. (Paris, 1884), I., 494–518. For the text of the constitution of 1791 see Duguit et Monnier, 1–35; Hélie, 268–294; Anderson, 58–95. For summary, Block, I., 494–497. Dupriez, Les Ministres, II., 253–269; Cambridge Modern History, VIII., Chap. 7.

[3] The members of the Convention were elected by manhood suffrage, one of the last acts of the Legislative Body having been the repeal of the tax qualification required by the constitution of 1791.

public.[1] Mindful for the time of the purpose of its creation, the new assembly appointed, October 11, a committee of nine to which was intrusted the task of drafting a republican constitution. February 15, 1793, the committee reported, and June 24 the Convention adopted an ultra-republican frame of government, the principal features of which were an executive council consisting of twenty-four members chosen by the legislative body from candidates named by the secondary electors of the departments; a unicameral *Corps législatif* chosen indirectly by manhood suffrage for one year, with power to enact "decrees," but only to propose "laws"; and an arrangement whereby projected laws were to be communicated to primary assemblies of citizens to be voted upon after the principle of the referendum.[2]

**315. The Constitution of the Year III. (1795).**—By reason of the intensity of party strife within the Convention, and the critical condition of affairs generally, the constitution of 1793, although duly ratified by the people, was never put in operation. On the basis of a decree of December 4, 1793, the Convention maintained through upwards of two years a revolutionary provisional government, and when, finally, in October, 1795, the body passed out of existence, it left behind it in the Constitution of the Year III. an instrument of government essentially different from the proposed instrument of 1793. The Constitution of the Year III. was framed under a hurried order of the Convention by a committee of eleven. The Convention adopted the committee's plan with but few modifications, and when the project was submitted to a popular vote it was approved by the overwhelming majority of 1,057,390 to 49,997. September 23, 1795, the new frame of government was solemnly promulgated.

The instrument of 1795, like that of 1791, was introduced by a Declaration of the Rights of Man and of the Citizen, in which were stated succinctly the fundamental principles of the Revolution. Legislative power was henceforth to be vested in two chambers conjointly—a Council of Five Hundred and a Council of Elders—the members of which should be chosen by the same electors, but under differing conditions of eligibility. The term of members of both chambers was fixed at three years, and one-third of the membership was renewable annually. The franchise was broader than under

[1] September 22 was reckoned the first day of the Year I. of French liberty, and the fundamental law of June 24, 1793, was known as the constitution of the Year I. For an illuminating sketch of the rise of the republic see H. A. L. Fisher, The Republican Tradition in Europe (New York, 1911), Chap. 4.

[2] Text in Duguit et Monnier, Les Constitutions, 66–78; Hélie, Les Constitutions, 376–384; Anderson, Constitutions, 171–184. Summary in Block, Dictionnaire Général, 497–498.

the constitution of 1791, being extended now to all citizens over twenty-one years of age who were able to read and write and who followed a trade or were liable to direct taxation; but the earlier system of indirect election by means of electoral colleges was retained. Upon the lower chamber alone was conferred the right of initiating legislation. The Elders, whose number was fixed at 250, might approve or reject, but were not permitted to amend, any measure submitted to them. Executive power was vested in a Directory consisting of five members chosen for a term of five years, one member retiring annually. Directors were selected by the Council of Elders from a double quota of nominees offered by the Council of Five Hundred. Aside from its creation of a plural, republican executive, the most notable feature of the constitution was its provision for the establishment of a bicameral legislative system, until now generally opposed by French reformers.[1]

**316. The Constitution of the Year VIII. (1799): Electoral System.**— The constitution of the Year III. continued in operation from October, 1795, to Napoleon's *coup d'état* of 18 Brumaire of the Year VIII. (November 9, 1799). In the course of a month and a half following the event mentioned there was drawn up a new fundamental law, prepared in the first instance largely by Napoleon and Sieyès, put into final shape by two commissions composed each of twenty-five members of the old Councils, and subsequently ratified by popular vote.[2] Amended from time to time by important organic enactments, the Constitution of the Year VIII. (December 13, 1799) comprised the fundamental law under which Napoleon ruled France until his abdication in 1814.

The new instrument, in ninety-five articles, was much briefer than the one which it replaced,[3] but the scheme of government for which it made provision was distinctly more complicated than that previously in operation. In the main, the Napoleonic constitution dealt with three subjects: the electoral system, the assemblies, and the executive. Nominally there was established a system of thorough-

[1] For the text of the constitution of 1795 see Duguit et Monnier, Les Constitutions, 78–118; Hélie, Les Constitutions, 436–466; Anderson, Constitutions, 212–254. Summary in Block, Dictionnaire Général, 498–500. Cambridge Modern History, VIII., Chap. 13; G. Dodu, Le parlementarisme et les parlementaires sous la Révolution, 1789–1799; origines du régime representatif en France (Paris, 1911); Fisher, Republican Tradition in Europe, Chap. 5.

[2] In favor of the new constitution there were cast 3,011,007 votes; against it, 1,562.

[3] The constitution of the Year III., containing 377 articles, is one of the lengthiest documents of the sort on record.

going manhood suffrage. But the conditions under which electoral powers were to be exercised rendered the plan very much less democratic than on the surface it appeared to be. The scheme was one devised by Sieyès under the designation of "lists of notables." In each communal district citizens twenty-one years of age and inscribed on the civil register were authorized to choose one-tenth of their number to comprise a "communal list." Those named on the communal list were to choose in their department a tenth of their number, who formed a "departmental list." And, similarly, those whose names appeared on the departmental list were to choose a tenth of their number, who formed a "national list." From these three lists in order were to be chosen, largely by the Senate, the public officials of the districts, the departments, and the nation. No electoral scheme has ever been devised which, while grounded upon the principle of manhood suffrage, more effectually withdraws from the people the actual choice of public officials, local as well as national.[1]

**317. Constitution of the Year VIII: Organs of Government.**—Of national governmental bodies there were four. One was the Tribunate, consisting of 100 members, one-fifth of whom were renewable every year. The function of the Tribunate was to discuss, but not necessarily to vote upon, legislative measures. A second was the *Corps législatif*, or Legislative Body, of 300 members, one-fifth being renewed annually. To this assembly was committed the power to vote upon, but not to debate, legislative measures. A third was the Senate, consisting at the outset of sixty life members, to be increased through a period of ten years to eighty. The Senate was authorized to pass upon the constitutionality of laws and to choose the Tribunes, the Legislators, and the Consuls from the national list. Its own ranks were to be recruited by co-optation from triple lists of candidates presented by the Tribunate, the Legislative Body, and the First Consul. Finally, there was the Council of State, whose organization was left purposely indefinite. Its members were appointed by the First Consul, and their business consisted principally in the preparation and advocacy of legislative and administrative measures.

If under this scheme the legislative organs were weak, the executive authority was notably strong. Powers of an executive character were vested in three consuls, appointed by the Senate for ten years and indefinitely eligible. Upon the First Consul was conferred power to promulgate the laws, to appoint all civil and military officials, and to do many other things of vital importance. Upon the second

[1] Under this system the primary electors numbered about 5,000,000; the district notables, 500,000; the departmental notables, 50,000; and the national list, 5,000.

and third consuls was bestowed simply a "consultative voice." Provision was made for a ministry, and under the letter of the constitution no act of the government was binding unless performed on the warrant of a minister. But in point of fact the principle of irresponsibility permeated the Napoleonic régime from the First Consul himself to the lowliest functionary. The conferring upon Napoleon, in 1802, of the consulship for life, and the conversion of the Consulate, in 1804, into the Empire, but concentrated yet more fully in the hands of a single man the whole body of governmental authority in France.[1]

## III. From the Restoration to the Revolution of 1848

**318. The Constitutional Charter, 1814.**—May 3, 1814,—three weeks after Napoleon's signature of the Act of Abdication,—the restored Bourbon king, Louis XVIII., entered Paris. Already the Senate had formulated a document, commonly known as the "Senatorial Constitution," wherein was embraced a scheme for a liberalized Bourbon monarchy.[2] Neither the instrument itself nor the authorship of it was acceptable to the new sovereign, and by him the task of drafting a constitution was given over to a commission consisting of three representatives of the crown, nine senators, and nine members of the Legislative Body. The task was accomplished with despatch. June 4 the new instrument, under the name of the Constitutional Charter, was adopted by the two chambers, and ten days later it was put in operation. With some modification, principally in 1830, it remained the fundamental law of France until the revolution of 1848.

The governmental system provided for in the Charter was in a number of respects more liberal than that which had prevailed during the dominance of Napoleon. At the head of the state stood the king, inviolable in person, in whose hands were gathered the powers of issuing ordinances, making appointments, declaring war, concluding treaties, commanding the armies, and initiating all measures of legislation. But there was established a bicameral legislature, by which the king's ministers might be impeached, and without whose assent no law might be enacted and no tax levied. The upper house, or Chamber of Peers, was composed of a variable number of members named by the crown

[1] The text of the constitution of the Year VIII. is in Duguit et Monnier, Les Constitutions, 118–129; Hélie, Les Constitutions, 577–585; and Anderson, Constitutions, 270–281. Summary in Block, Dictionnaire Général, I., 500–505. Cambridge Modern History, IX., Chap. 1.

[2] Duguit et Monnier, Les Constitutions, 179–182; Anderson, Constitutions, 446–450; Block, Dictionnaire Général, I., 505–506.

in heredity or for life.[1] The lower, or Chamber of Deputies, consisted of representatives elected in the departments for a term of five years, one-fifth retiring annually.[2] Provision was made for the annual assembling of the chambers; and although the proposing of laws was vested exclusively in the crown, it was stipulated that either house might petition the king to introduce a measure relating to any specific subject. The Charter contained a comprehensive enumeration and guarantee of the civil rights of French citizens.[3]

**319. The Electoral System.** The Charter prescribed the qualifications required of voters and of deputies, but did not define the manner in which deputies should be chosen. The lack was supplied by an election law enacted February 5, 1817. The system established was that of *scrutin de liste.* Under it the electors—men of a minimum age of thirty who paid each year a direct tax of at least three hundred francs—were required to assemble in the principal town of the department and there choose the full quota of deputies to which the department was entitled. The system proved of distinct advantage to the liberal elements, whose strength lay largely in the towns, and in 1820 when the conservative forces procured control and inaugurated a general reaction a measure was adopted, though only after heated debate, by which the arrangement was completely altered. The membership of the Chamber was increased from 258 to 430 and for the principle of *scrutin de liste* was substituted that of *scrutin d'arrondissement.* Each arrondissement became a single-member district and the electors were permitted to vote for one deputy only. In this manner 258 of the members were chosen. The remaining 172 were elected at the chief departmental towns by the voters of the department who paid the most taxes, an arrangment under which some twelve thousand of the wealthier electors became possessed of a double vote. Voting was by ballot, but the elector was required to write out his ballot in the presence of an appointee of the government and to place it in his hands unfolded.[4]

[1] By law of December 29, 1831, it was stipulated that only life peers might thereafter be appointed, and the king was required to take all appointees from a prescribed list of dignitaries. Duguit et Monnier, Les Constitutions, 231–232.

[2] A law of June 9, 1824, stipulated that thereafter the Chamber of Deputies should be elected integrally for a period of seven years. Duguit et Monnier, Les Constitutions, 211.

[3] The text of the Charter of 1814 may be found in Duguit et Monnier, Les Constitutions, I., 183–190; Hélie, Les Constitutions, 884–890; and, in English translation, in Anderson, Constitutions, 457–465, and University of Pennsylvania Translations and Reprints, I., No. 3. Summary in Block, Dictionnaire Général, I., 506–508. Cambridge Modern History, IX., Chap. 18.

[4] Duguit et Monnier, Les Constitutions, 206–209; Hélie, Les Constitutions, 934–936.

**320. Liberalizing Changes in 1830–1831.**—Upon the enforced abdication of Charles X. in 1830 a parliamentary commission prepared a revision of the Charter, which, being adopted, was imposed upon the new sovereign, Louis Philippe, and was continued in operation through the period of the Orleanist monarchy. The preamble of the original document, in which language had been employed which made it appear that the Charter was a grant from the crown, was stricken out. Suspension of the laws by the sovereign was expressly forbidden. Each chamber was given the right to initiate legislation, the responsibility of the ministers to the chambers was proclaimed, and the sessions of the Peers, hitherto secret, were made public. The integral renewal of the Deputies, established in 1824, was continued, but the term of membership was restored to five years. The minimum age of electors was reduced from thirty to twenty-five years, and of deputies from forty to thirty. Subsequently, April 19, 1831, a law was passed whereby the suffrage—so restricted at the close of the Napoleonic régime that in a population of 29,000,000 there had been, in 1814, not 100,000 voters—was appreciably broadened. The direct tax qualification of three hundred francs was reduced to one of two hundred, and, for certain professional classes, of one hundred. By this modification the number of voters was doubled, though the proportion of the enfranchised was still but one in one hundred fifty of the total population, and it would be a mistake to regard the government of the Orleanist period as in effect more democratic than that by which it was preceded. At the most, it was a government by and for the well-to-do middle class.[1]

## IV. The Second Republic and the Second Empire

**321. The Republican Constitution of 1848.**—With the overthrow of the Orleanist monarchy, in consequence of the uprising of February 24, 1848, France entered upon a period of aggravated political unsettlement. Through upwards of five years the nation experimented once more with republicanism, only at the end of that period to emerge a monarchy, an empire, and the dominion of a Bonaparte. By the provisional government which sprang from the revolution a republic was proclaimed tentatively and the nation was called upon to elect, under a system of direct manhood suffrage, an assembly to frame a constitution. The

[1] For the act of the Chambers relative to the modification of the Constitutional Charter and to the accession of Louis Philippe, see Duguit et Monnier, Les Constitutions, 213–218; Hélie, Les Constitutions, 987–992; and Anderson, Constitutions, 507–513. The electoral law of 1831 is in Duguit et Monnier, 219–230. Cambridge Modern History, X., Chap. 15; G. Weill, La France sous la monarchie constitutionnelle, 1814–1848 (new ed., Paris, 1912).

elections—the first of their kind in the history of France—were held April 23, 1848, and the National Constituent Assembly, consisting of nine hundred members, eight hundred of whom were moderate republicans, met May 4 in Paris. During the summer the draft of a constitution prepared by a committee of eighteen, was duly debated, and November 4 it was adopted by a vote of 739 to 30.

The Constitution of 1848 declared the Republic to be perpetual and the people to be sovereign. It asserted, furthermore, that the separation of powers is the first condition of a free government. In respect to the organs of government it provided, in the first place, for a legislative assembly consisting of a single chamber of 750 members[1] chosen integrally for three years, directly by secret ballot on the principle of departmental *scrutin de liste*, and by electors whose only necessary qualifications were those of age (twenty-one years) and of non-impairment of civil rights.[2] Executive powers were vested in a president of the Republic, elected for a term of four years by direct and secret ballot, and by absolute majority of all votes cast in France and Algeria. Under stipulated conditions, e. g., if no candidate should receive an absolute majority and at the same time a total of at least two million votes, the president was required to be chosen by the Assembly from the five candidates who had polled the largest votes. Save after a four-year interval, the president was ineligible for re-election. Upon him were bestowed large powers, including those of proposing laws, negotiating and ratifying treaties with the consent of the Assembly, appointing and dismissing ministers and other civil and military officers, and disposing of the armed forces. With respect to the functions and powers of the ministers the constitution was not explicit, and whether the instrument might legitimately be interpreted to make provision for a parliamentary system of government was one of the standing issues throughout the days of its duration.[3]

**322. From Republic to Empire.**—December 10, 1848, Louis Napoleon, nephew of the first Napoleon, was chosen president by an overwhelming

[1] Including representatives of Algeria and the colonies.

[2] Electoral law of March 15, 1849. Duguit et Monnier, Les Constitutions, 247–265.

[3] Dupriez, Les Ministres, II., 308–312. The text of the Constitution of 1848 is in Duguit et Monnier, Les Constitutions, 232–246; Hélie, Les Constitutions, 1102–1113; and Anderson, Constitutions, 522–537. Summary in Block, Dictionnaire Général, I., 510–513. Cambridge Modern History, XI., Chap. 5; V. Pierre, Histoire de la république de 1848, 2 vols. (Paris, 1873–1878); P. de la Gorce, Histoire de la deuxième république française, 2 vols. (Paris, 1887); E. Spuller, Histoire parlementaire de la deuxième république (Paris, 1893); Fisher, Republican Tradition in Europe, Chap. 8.

vote, and ten days later he assumed office. In May, 1849, an Assembly was elected, two-thirds of whose members were thoroughgoing monarchists; so that, as one writer has put it, both the president and the majority of the Assembly were, by reason of their very being, enemies of the constitution under which they had been elected.[1] The new order, furthermore, failed completely to strike root throughout the nation at large. In this state of things the collapse of the Republic was but a question of time. By an electoral law of May 31, 1850, requiring of the elector a fixed residence of three years instead of six months, the suffrage arrangements of 1849 were subverted and the electorate was reduced by three millions, or virtually one-third.[2] December 2, 1851, occurred a carefully planned *coup d'état*, on which occasion the Assembly was dissolved, the franchise law of 1849 was restored, and the people, gathered in primary assemblies, were called upon to intrust to the President power to revise the national constitution.[3] December 20, by a vote of 7,439,216 to 640,737, the people complied. Thereafter, though continuing officially through another year, the Republic was in reality dead. November 7, 1852, the veil was thrown off. A *senatus-consulte* decreed a re-establishment of the Empire,[4] and by a plebiscite of eleven days later the people, by a vote of 7,824,189 to 253,145, sanctioned what had been done. December 2, Napoleon III. was proclaimed Emperor of the French.

**323. The Imperial Constitution, 1852.**—Meanwhile, March 29, 1852, there had been put in operation a constitution,[5] nominally republican, but in reality strongly resembling that in force during the later years of Napoleon I. The substitution, later in the year, of an emperor for a president upon whom had been conferred a ten-year term was but a matter of detail. A *senatus-consulte* of December 25, made all of the necessary adjustments, and the constitution of 1852, with occasional modifications, remained the fundamental law of France until the collapse of the Empire in 1870. Upon the emperor were conferred very extended powers. His control of the administrative system was made practically absolute. He commanded the army and navy, decided upon war and peace, concluded treaties, and granted pardons. He alone possessed the power of initiating legislation and of promulgating

[1] Hazen, Europe since 1815, 201.

[2] The text of this measure is in Duguit et Monnier, Les Constitutions, 265–268, and Hélie, Les Constitutions, 1149–1150. H. Laferrière, La loi électorale du 31 mai 1850 (Paris, 1910).

[3] Anderson, Constitutions, 538–543.

[4] Duguit et Monnier, Les Constitutions, 290–292; Anderson, Constitutions, 560–561.

[5] Drawn up by a commission of five, under date of January 14, 1852.

the laws. To him alone were all ministers responsible, and of such parliamentarism as had existed formerly there remained not a vestige. Of legislative chambers there were two: a *Corps législatif* of 251 members elected by direct manhood suffrage every six years, and a Senate composed of cardinals, admirals, and other *ex-officio* members, and of a variable number of members appointed for life by the emperor. The powers of the Senate, exercised invariably in close conjunction with the head of the state, were of some importance, but those of the popular chamber were so restricted that the liberal arrangements which existed respecting the suffrage afforded but the appearance, not the reality, of democracy.[1]

**324. Constitutional Alterations, 1869–1870.**—Throughout upwards of two decades the illusion of popular government was maintained as well as might be. The country was prosperous and the government, if illiberal, was on the whole enlightened. Discontent, none the less, was not infrequently in evidence, and during especially the second half of the reign the Emperor found it expedient more than once to make some concession to public sentiment. In the later sixties he was compelled to moderate the laws which dealt with the press and with political meetings, and in 1869–1870 he was brought to the point of approving a series of measures which gave promise of altering in an important manner the entire governmental system. One was a *senatus-consulte* of September 8, 1869, whereby the sittings of the Senate were made public, the Legislative Body was given the right to elect all of its own officials, and the parliamentary system was nominally re-established.[2] By reason of the fact, however, that ministers were not permitted to be members of either the Legislative Body or the Senate, and that they were declared still to be responsible to the crown, the effects of the last-mentioned feature of the reform were inconsiderable. By a *senatus-consulte* of April 20, 1870, (approved by a plebiscite of May 8 following) there were adopted still more important constitutional changes. In the first place, the Senate, which hitherto had been virtually an Imperial council, was erected into a legislative chamber co-ordinate with the Legislative Body, and upon both houses was conferred the right of initiating legislation. In the second place, the provision that the ministers should be dependent solely upon the emperor was stricken from the constitution, thus clearing the way for a more effective realization

[1] The text of the constitution of 1852 is in Duguit et Monnier, Les Constitutions, 274–280; Hélie, Les Constitutions, 1167–1171; Anderson, Constitutions, 543–549. Summary in Block, Dictionnaire Général, I., 513–515. Cambridge Modern History, XI., Chaps. 5, 10.

[2] Text in Duguit et Monnier, Les Constitutions, 307–308; Hélie, Les Constitutions, 1314–1315; and Anderson, Constitutions, 579–580.

of the parliamentary system of government. Finally, it was stipulated that the constitution should thereafter be modified only with the express approval of the people.[1] These reforms, however, were belated. They came only after the popularity of the Emperor had been strained to the breaking point, and by reason of the almost immediate coming on of the war with Prussia there was scant opportunity for the testing of their efficacy.

## V. The Establishment of the Third Republic

**325. The National Assembly.**—The present French Republic was instituted under circumstances which gave promise of even less stability than had been exhibited by its predecessors of 1793 and 1848.[2] Proclaimed in the dismal days following the disaster at Sedan, it owed its existence, at the outset, to the fact that, with the capture of Napoleon III. by the Prussians and the utter collapse of the Empire, there had arisen, as Thiers put it, "a vacancy of power." The proclamation was issued September 4, 1870, when the war with Prussia had been in progress but seven weeks.[3] During the remaining five months of the contest the sovereign authority of France was exercised by a Provisional Government of National Defense, with General Trochu at its head, devised in haste to meet the emergency by Gambetta, Favre, Ferry, and other former members of the Chamber of Deputies. Upon the capitulation of Paris, January 28, 1871, elections were ordered for a national assembly, the function of which was to decide whether the war should be prolonged and what terms of peace should be accepted at the hands of the victorious Germans. There was no time in which to frame a new electoral system. Consequently the elec-

[1] The text of the measure of April 20, 1870, is in Duguit et Monnier, Les Constitutions, 308–314; Hélie, Les Constitutions, 1315–1327; and Anderson, Constitutions, 581–586. Cambridge Modern History, XI., Chap. 17; H. Berton, L'évolution constitutionnelle du second empire (Paris, 1900). An important larger work is P. de la Gorce, Histoire du second empire, 7 vols. (Paris, 1894–1905).

[2] The best account of the beginnings of the Third Republic is that in G. Hanotaux, Histoire de la France contemporaine, 4 vols. (Paris, 1903–1909), I. There is an English translation of this important work by J. C. Tarver. A recent book of value is A. Bertrand, Les origines de la troisième république, 1871–1876 (Paris, 1911). Mention may be made also of E. Zevort, Histoire de la troisième république, 4 vols. (Paris, 1896–1901), I.; C. Duret, Histoire de France de 1870 à 1873 (Paris, 1901); A. Callet, Les origines de la troisième république (Paris, 1889); F. Littré, L'établissement de la troisième république (Paris, 1880); L. E. Benoit, Histoire de quinze ans, 1870–1885 (Paris, 1886); F. T. Marzials, Léon Gambetta (London, 1890); and P. B. Ghensi, Gambetta: Life and Letters (New York, 1910). There is an interesting interpretation in Fisher, Republican Tradition in Europe, Chap. 11.

[3] Duguit et Monnier, Les Constitutions, cxvi.

toral procedure of the Second Republic, as prescribed by the law of March 15, 1849, was revived,[1] and by manhood suffrage there was chosen, February 8, an assembly of 758 members, representative of both France and the colonies. Meeting at Bordeaux, February 12, this body, by unanimous vote, conferred upon the historian and parliamentarian Thiers the title of "Chief of the Executive Power," without fixed term, voted almost solidly for a cessation of hostilities, and authorized Thiers to proceed with an immediate negotiation of peace.

**326. The Problem of a Permanent Government.**—Pending a diplomatic adjustment, the Assembly was disposed to defer the establishment of a permanent governmental system. But the problem could not long be kept in the background. There were several possible solutions. A party of Legitimists, i. e., adherents of the old Bourbon monarchy, was resolved upon the establishment of a kingdom under the Count of Chambord, grandson of the Charles X. who had been deposed at the revolution of 1830. Similarly, a party of Orleanists was insistent upon a restoration of the house of Orleans, overthrown in 1848, in the person of the Count of Paris, a grandson of the citizen-king Louis Philippe. A smaller group of those who, despite the discredit which the house of Bonaparte had suffered in the war, remained loyal to the Napoleonic tradition, was committed to a revival of the prostrate empire of the captive Napoleon III. Finally, in Paris and some portions of the outlying country there was uncompromising demand for the definite establishment of a republic.[2] In the Assembly the monarchists outnumbered the republicans five to two, and, although the members had been chosen primarily for their opinions relative to peace rather than to constitutional forms, the proportion throughout the nation was probably about the same. The republican outlook, however, was vastly improved by the fact that the monarchists, having nothing in common save opposition to republicanism, were hopelessly disagreed among themselves.[3]

**327. The Rivet Law, 1871.**—As, from the drift of its proceedings, the royalist character of the Assembly began to stand out in unmistakable relief, there arose from republican quarters vigorous opposition to the prolonged existence of the body. Even before the signing of the Peace of Frankfort, May 10, 1871, there occurred a clash be-

[1] Most of the disqualifications for voting which were enumerated in the law of 1849 were declared inapplicable in the present election.

[2] G. Weill, Histoire du parti républicain en France de 1814 à 1870 (Paris, 1900).

[3] Of pure Legitimists there were in the Assembly about 150; of Bonapartists, not over 30; of Republicans, about 250. The remaining members were Orleanists or men of indecisive inclination. At no time was the full membership of the Assembly in attendance.

tween the Assembly and the radical Parisian populace, the upshot of which was the bloody war of the Commune of April–May, 1871.[1] The communards fought fundamentally against state centralization, whether or not involving a revival of monarchy. The fate of republicanism was not in any real measure bound up with their cause, so that after the movement had been suppressed, with startling ruthlessness, by the Government, the political future of the nation remained no less in doubt than previously it had been. Thiers continued at the post of Chief of the Executive, and the Assembly, clothed by its own assumption with powers immeasurably in excess of those it had been elected to exercise, and limited by no fixed term, gave not the slightest indication of a purpose to terminate its career. Rather, the body proceeded, August 31, 1871, to pass, by a vote of 491 to 94, the Rivet law, whereby the existing régime was to be perpetuated indefinitely.[2] By this measure unrestricted sovereignty, involving the exercise of both constituent and legislative powers, was declared by the Assembly to be vested in itself. Upon the Chief of the Executive was conferred the title of President of the French Republic; and it was stipulated that this official should thereafter be responsible to the Assembly, and presumably removable by it. A quasi-republic, with a crude parliamentary system of government, thereafter existed *de facto;* but it had as yet absolutely no constitutional basis.

**328. Failure of the Monarchist Programmes.**— This anomalous condition of things lasted many months, during the course of which Thiers and the Assembly served the nation admirably through the promotion of its recovery from the ravages of war. More and more Thiers, who had begun as a constitutional monarchist, came to believe in republicanism as the style of government which would divide the French people least, and late in 1872 he put himself unqualifiedly among the adherents of the republican programme. Thereupon the monarchists, united for the moment in the conviction that for the good of their several causes Thiers must be deposed from his position of influence, brought about in the Assembly a majority vote in opposition to him, and so induced his resignation, May 24, 1873.[3] The opponents of republicanism now felt that the hour had come for the termination of a governmental régime which had by them been re-

[1] In March the Assembly had transferred its sittings from Bordeaux to Versailles.

[2] Duguit et Monnier, Les Constitutions, 315–316; Anderson, Constitutions, 604–606.

[3] Anderson, Constitutions, 622–627; A. Lefèvre Pontalis, L'Assemblée nationale et M. Thiers, in *Le Correspondant*, Feb. 10, 1879; A. Thiers, Notes et Souvenirs de 1870 à 1873 (Paris, 1903); J. Simon, Le gouvernement de M. Thiers (Paris, 1878); E. de Marcère, L'Assemblée nationale de 1871 (Paris, 1904).

garded all the while as purely provisional. The monarchist Marshal MacMahon was made President, a coalition ministry of monarchists under the Orleanist Duke of Broglie was formed, and republicanism in press and politics was put under the ban. Between the Legitimists and the Orleanists there was worked out an ingenious compromise whereby the Bourbon Count of Chambord was to be made king under the title of Henry V. and, he having no heirs, the Orleanist Count of Paris was to be recognized as his successor. The whole project was brought to naught, however, by the persistent refusal of the Count of Chambord to give up the white flag, which for centuries had been the standard of the Bourbon house. The Orleanists held out for the tricolor; and thus, on what would appear to most people a question of distinctly minor consequence, the survival of the Republic was for the time determined.[1]

In the hope that eventually they might gain sufficient strength to place their candidate on the throne without the co-operation of the Legitimists, the Orleanists joined with the Bonapartists and the republicans, November 20, 1873, in voting to fix the term of President MacMahon definitely at seven years.[2] By the Orleanists it was assumed that if within that period an opportunity should be presented for the establishment of the Count of Paris upon the throne, the President would clear the way by retiring. The opportunity, however, never came, and the septennial period for the French presidency, established thus by monarchists in their own interest, was destined to pass into the permanent mechanism of a republican state.

## VI. The Constitution of To-day

**329. Circumstances of Formation.**—Meanwhile the way was opening for France to acquire what for some years she had lacked completely, i. e., a constitution. May 19, 1873, the minister Dufaure, in behalf of the Government, laid before the Assembly *projets* of two organic measures, both of which, in slightly amended form, passed in 1875 into the permanent constitution of the Republic. May 24 occurred the retirement of President Thiers, and likewise that of Dufaure, but in the Assembly, the two proposed measures were none the less referred to a commission of thirty. Consideration in committee was sluggish, and the Assembly itself was not readily roused to action. During the twelvemonth that followed several *projets* were brought forward, and there was desultory discussion, but no progress. In the

[1] Marquis de Castallane, Le dernier essai de restauration monarchique de 1873, in *Nouvelle Revue*, Nov. 1, 1895.

[2] Duguit et Monnier, Les Constitutions, 319; Anderson, Constitutions, 630.

summer of 1874 a new commission of thirty was elected and to it was intrusted the task of studying and reporting upon all of the numerous constitutional laws that had been suggested. The majority of this commission, monarchist by inclination, contented itself with proposing, in January, 1875, a law providing simply for the continuance of the existing "septennate." Only after earnest effort, and by the narrow vote of 353 to 352, were the republican forces in the Assembly able to carry an amendment, proposed by the deputy Wallon, in which was made definite provision for the election of the President of the Republic, and therefore, by reasonable inference, for the perpetuity of the Republic itself.[1]

Before the year 1875 was far advanced the Assembly threw off its lethargy and for the first time in its history addressed itself systematically to the drafting of a national constitution. To this course it was impelled by the propaganda of Gambetta and other republican leaders, by fear on the part of the Legitimists and Orleanists that the existing inchoate situation would lead to a Bonapartist revival, and by a new *modus operandi* which was cleverly arranged between the republicans and the Orleanists. Convinced that an Orleanist monarchy was, at least for a time, an impossibility, and preferring a republic to any alternative which had been suggested, the Orleanist members of the Assembly gave their support in sufficient numbers to the programme of the republicans to render it at last possible to work out for the nation a conservatively republican constitutional system.

**330. Texts and General Nature.**—Of the organic laws which comprise the constitution of France to-day five which date from 1875 are of principal importance: (1) that of February 24, on the Organization of the Senate; (2) that of February 25,—the most important of all,—on the Organization of the Public Powers; (3) that of July 16, on the Relations of the Public Powers; (4) that of August 3, on the Election of Senators; and (5) that of November 30, on the Election of Deputies. Collectively, these measures are sometimes referred to as the "constitution of 1875." Other and later constitutional enactments of considerable importance include (1) the law of July 22, 1879, relating to the seat of the Executive Power and of the two Chambers at Paris; (2) the law of December 9, 1884, amending existing organic laws on the Organization of the Senate and the Election of Senators; and (3) laws of June 16, 1885, and February 13 and July 17, 1889, respecting the Election of Deputies.[2]

[1] Anderson, Constitutions, 633.

[2] The original texts of these documents are printed in Duguit et Monnier, Les Constitutions, 319–350, and Hélie, Les Constitutions, 1348–1456. For English

Springing from the peculiar conditions which have been described, the handiwork of a body in which only a minority felt the slightest degree of enthusiasm for it, the constitution of the French Republic is essentially unlike any instrument of government with which the English-speaking world is familiar. It differs from the British in having been put almost wholly into written form. It differs from the American in that it consists, not of a single document, but of many, and in that it emanated, not from a great constituent assembly, charged with the specific task of formulating a governmental system, but from a law-making body which in truth had never been formally intrusted by the nation with even the powers of legislation proper, and had merely arrogated to itself those functions of constitution-framing which it chose to exercise.[1] It consists simply of organic laws, enacted chiefly by the provisional Assembly of 1871–1875, but amended and amplified to some extent by the national parliament in subsequent years. Unlike the majority of constitutions that went before it in France, it is not orderly in its arrangement or comprehensive in its contents. It is devoid of anything in the nature of a bill of rights,[2] and concerning the sovereignty of the people it has nothing to say. Even in respect to many essential aspects of governmental organization and practice it is mute. It contains no provision respecting annual budgets, and it leaves untouched the entire field of the judiciary. The instrument lays down only certain broad lines of organization; the rest it leaves to be supplied through the channels of ordinary legislation.

versions see Dodd, Modern Constitutions, I., 286–319; C. F. A. Currier, Constitutional and Organic Laws of France, in *Annals of the American Academy of Political and Social Science*, March, 1893, supplement; and Anderson, Constitutions, 633–640. Albert Duc de Broglie, Histoire et Politique: Étude sur la constitution de 1875 (Paris, 1897); R. Saleilles, The Development of the Present Constitution of France, in *Annals of Amer. Academy*, July, 1895.

[1] Among French writers upon constitutional law there has been no small amount of difference of opinion as to whether the National Assembly is to be regarded as having been entitled to the exercise of constituent powers. For a brief affirmative argument see Duguit et Monnier, Les Constitutions, cxvii. Cf. Dicey, Law of the Constitution, 121, note.

[2] It is to be observed, however, that many authorities agree with Professor Duguit in his contention that although the individual rights enumerated in the Declaration of Rights of 1789 are passed without mention in the constitutional laws of 1875, they are to be considered as lying at the basis of the French governmental system to-day. Any measure enacted by the national parliament in contravention of them, says Professor Duguit, would be unconstitutional. They are not mere dogmas or theories, but rather positive laws, binding upon not only the legislative chambers but upon the constituent National Assembly. Traité de droit constitutionnel (Paris, 1911), II., 13.

**331. Amendment.**—It was the desire of all parties in 1875 that the constitutional laws should be easy of amendment, and indeed most men of the time expected the governmental system which was being established to undergo, sooner or later, fundamental modification. The process of amendment is stipulated in the law of February 25, 1875.[1] Amendments may be proposed by the President of the Republic or by either of the chambers of Parliament. When, by a majority of votes in each, the Senate and Chamber of Deputies declare a revision of the constitutional laws necessary, the two chambers are required to be convened in the character of a National Assembly, and amendments are adopted by absolute majority of this composite body. Contrary to earlier French practice, the exercise of constituent and of ordinary legislative powers is thus lodged in the same body of men, the only difference of procedure in the two instances arising from the temporary amalgamation of the chambers for constituent purposes. The sole limitation that has been imposed upon the revising powers of the Assembly is contained in a clause adopted in an amendment of August 14, 1884, which forbids that the republican style of government be made the subject of a proposed revision. In point of fact, amendments have been few, although some, as that of December 9, 1884, modifying the methods of electing senators and those of June 16, 1885, and February 13 and July 17, 1889, re-establishing single districts for the election of deputies and prohibiting multiple candidatures, have been of a high degree of importance.

[1] Art. 8. Dodd, Modern Constitutions, I., 288.

## CHAPTER XVI

### THE PRESIDENT, THE MINISTRY, AND PARLIAMENT

### I. The President

Under the French system of government functions of a purely executive nature are vested in the President of the Republic and the Ministry, assisted by a numerous and highly centralized body of administrative officials. The presidency had its origin in the unsettled period following the Prussian war when it was commonly believed that monarchy, in one form or another, would eventually be re-established. The title "President of the Republic" was created in 1871; but the office as it exists to-day hardly antedates the election of Marshal MacMahon in 1873. The character and functions of the presidency were determined in no small measure by the circumstance that by those who created the dignity it was intended merely to keep the French people accustomed to visible personal supremacy, and so to make easier the future transition to a monarchical system. Counting Thiers, the Republic has had thus far nine presidents: Adolphe Thiers, 1871–1873; Marshal MacMahon, 1873–1879; Jules Grévy, 1879–1887; F. Sadi-Carnot, 1887–1894; Casimir-Perier, June, 1894, to January, 1895; Félix Faure, 1895–1899; Émile Loubet, 1899–1906; Armand Fallières, 1906–1913; and Raymond Poincaré elected early in 1913.

**332. Election and Qualifications.**—The President is chosen for seven years by an electoral college consisting of the members of the Senate and of the Chamber of Deputies, meeting at Versailles in National Assembly. The choice is by absolute majority of the combined body. The constitutional law of July 16, 1875, stipulates that one month, at least, before the expiration of his term the President shall call together the National Assembly for the election of a successor. In default of such summons, the meeting takes place automatically on the fifteenth day before the expiration; and in the event of the death or resignation of the President the Chambers are required to assemble immediately without summons.[1] There is no vice-president,

[1] Art. 3. Dodd, Modern Constitutions, I., 291.

nor any law of succession, so that whenever the presidential office falls vacant there must be a new election; and, at whatever time and under whatever circumstance begun, the term of the newly elected President is regularly seven years. As upon the occasion of the assassination of Sadi-Carnot in 1894, a vacancy may arise wholly unexpectedly. Under even the most normal conditions, however, the election of a President in France is attended by no period of campaigning comparable with that which attends a similar event in the United States. The Assembly habitually selects a man who has long been a member, and has perhaps served as president, of one or the other of the chambers, who has had experience in committee work and, as a rule, in one or more ministerial offices, and who, above all things, is not too aggressive or domineering. An election is likely to be carried through all stages within the space of forty-eight hours. The qualifications requisite for election are extremely broad. Until 1884 any male citizen, regardless of age, affiliation, or circumstance, was eligible. In the year mentioned members of families that have reigned in France were debarred, and this remains the only formal disqualification. A President is eligible indefinitely for re-election.[1]

**333. Privileges.**—The President is paid the sum of 1,200,000 francs a year, half as salary, half to cover travelling expenses and the outlays incumbent upon him as the official representative of the nation. He resides in the Palais de l'Elysée, where he maintains in a measure the state and ceremony that ordinarily are associated only with monarchy. His dignity is safeguarded by special and effective penalties for insult and libel. Like the President of the United States, during his term of office he is exempt from the processes of the ordinary courts; but, like his American counterpart, he may be tried by the Senate, on articles of impeachment presented by the lower legislative chamber. The President of the United States may be impeached for "treason, bribery, and other high crimes and misdemeanors"; the French President may be impeached for treason only. On the other hand, whereas the penalty that may be imposed upon the American President by the judgment of the Senate is confined to removal from office and disqualification to hold office, the French constitution fixes no limit to the penalty which may be visited upon a President convicted of treason. So far as the law is concerned, he might be condemned to death.

**334. Powers: Participation in Law-making.**—The President possesses powers which are numerous and, on paper at least, formidable.

[1] A. Tridon, France's Way of Choosing a President, in *Review of Reviews*, Dec., 1912.

A first group pertains to the making of law. "The President of the Republic," says the constitutional law of February 25, 1875, "shall have the initiative of laws, concurrently with the members of the two chambers. He shall promulgate the laws when they have been voted by the two chambers; and he shall look after and secure their execution." [1] The concurrent power of initiating legislation, exercised through the Ministry, is something that is not possessed by the American President, who can do no more than suggest and recommend measures he deems desirable. The President of France, on the other hand, possesses only a suspensive veto. He may remand a measure of which he disapproves for fresh consideration by Parliament; but if it is re-enacted, by even a simple majority, it is incumbent upon him to promulgate it as law. If, however, the veto power is virtually nonexistent, the President possesses an important prerogative in the right of issuing ordinances with the force of supplementary legislation. These may be not merely executive orders in matters of detail, such as are issued by the President of the United States, but sweeping injunctions deemed essential to the enforcement of the laws in general. The only limitation is that such ordinances must not contravene the constitution or any enactment of the chambers. The power is one which, rather curiously, rests upon no express constitutional provision, but simply upon custom. The right which the President possesses, with the consent of the Senate, to dissolve the Chamber of Deputies before the expiration of its term, thereby precipitating a general election, may also be made the means of exercising considerable influence upon legislative processes and achievements.

**335. Powers: Executive and Judicial.**—As the head of the national administration, the President appoints to all civil and military offices connected with the central government. His appointments do not require ratification by the Senate, or by any other body. He may even create, by decree, new offices. And his power of removal from office, save in certain cases, is absolutely without restriction. Appointments and removals, however, are in practice made through the Ministry, and the President has no patronage at his immediate disposal other than that of the posts in his own household. In respect to foreign affairs the President's powers are more substantial. Like the American President, he represents his country in the sending and receiving of ambassadors, ministers, envoys, and consuls, and in the negotiation and conclusion of treaties. Treaties affecting peace, commerce, territorial possessions, finances, or the status of Frenchmen in foreign countries, require the ratification of the chambers; others call for no

[1] Art. 3. Dodd, Modern Constitutions, I., 286.

such action, and even a foreign alliance may be concluded by the Executive working independently. On the military side, the President is commander-in-chief of the armed forces of the nation, military and naval. He may not declare war without the consent of the chambers; but through the conduct of foreign affairs he may at any time, very much as may the President of the United States, create a situation by which war will be rendered inevitable. Finally, the President is vested with the powers of pardon and reprieve, although amnesty may be granted only by law.[1]

## II. The Ministry

**336. Importance in the Government.**—"There is," says an English writer of the last generation, "no living functionary who occupies a more pitiable position than a French President. The old kings of France reigned and governed. The Constitutional King, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign nor yet to govern." [2] The weakness of the French President's position arises specifically from two clauses of the constitutional law of February 25, 1875. One of them stipulates that "every act of the President of the Republic shall be countersigned by a minister." The other provides that "the ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts." [3] Under the operation of these principles the Ministry becomes the real executive. Like the sovereign of Great Britain, the President can do no wrong, because the acts that are officially his are in reality performed by the ministers, who alone (save in the case of treason) are responsible for them. Chosen by the members of Parliament, the President belongs normally to the party group which is at the time in the ascendant, and by it he is kept in tutelage. The leaders of this group are the ministers, and, in a very large measure, the President simply approves passively the policies of this body of men and signs and promulgates the measures which it carries through the chambers.

**337. Organization and Functions.**—Ministerial portfolios are created

[1] Dupriez, Les Ministres, II., 358–372; J. Nadal, Attributions du président de la république en France et aux États-Unis (Toulouse, 1909). For a brief American discussion of the same subject see M. Smith, The French Presidency and the American, in *Review of Reviews*, Feb., 1906. Cf. A. Cohn, Why M. Fallières is an Ideal French President, ibid., July, 1908.

[2] Henry Maine, Popular Government (London, 1885), 250.

[3] Arts. 3 and 6. Dodd, Modern Constitutions, I., 287.

by executive decree. Their number has been somewhat variable. In 1875 there were nine. In 1879 there was created a tenth. Between 1881 and 1887 there were eleven. To-day there are twelve, as follows: (1) Interior; (2) Finance; (3) War; (4) Justice and Public Worship; (5) Marine; (6) Colonies; (7) Public Instruction; (8) Foreign Affairs; (9) Commerce; (10) Agriculture; (11) Public Works and Posts, Telegraphs, and Telephones; and (12) Labor. Portfolios may be not only created but rearranged by simple executive decree, though of course the necessary financial provisions are conditioned upon the approval of the chambers. The premier may occupy any one of the ministerial posts, or even two of them at one time. He is named by the President, and he, acting with the President, designates his colleagues and allots to them their respective portfolios. Usually, though not necessarily, the ministers are members of the Senate or of the Chamber of Deputies, principally the latter.[1] Whether members or not, they have a right to attend all sessions of both chambers and to take an especially privileged part in debate. Ministers receive annual salaries of 60,000 francs and reside, as a rule, in the official mansions maintained for the heads of the departments they control.

Collectively the ministers possess two sets of functions which are essentially distinct. The one they fulfill as a "council"; the other as a "cabinet." In the capacity of a council they exercise a general supervision of the administration of the laws, to the end that there may be efficiency and unity in the affairs of state. In the event of the President's death, incapacitation, or resignation, the Council is authorized to act as head of the state until the National Assembly shall have chosen a successor. As a cabinet the ministers formulate the fundamental policies of the Government and represent it in the chambers. The Council is administrative and is expressly recognized by law; the Cabinet is political and is not so recognized. In the meetings of the Council the President of the Republic not only sits, but presides; in those of the Cabinet he rarely even appears. Aside from the President, however, the two bodies, in personnel, are identical.[2]

**338. The Parliamentary System: Multiplicity of Parties.**—On paper France has to-day a parliamentary system of government sub-

[1] In earlier days the ministers of war and of the marine were selected not infrequently from outside Parliament, but this practice has been discontinued.

[2] Dupriez, Les ministres, II., 332–357. A recent treatise of value is H. Noell, L'Administration centrale; les ministères, leur organisation, leur rôle (Paris, 1911). Mention may be made of L. Rolland, Le Conseil d' État et les réglements d'administration publique, in *Revue du Droit Public*, April–June, 1911; J. Barthélemy, Les sous-secrétaires d'état, ibid.; P. Ma, L'organisation du Ministère des Colonies, in *Questions Diplomatiques et Coloniales*, Sept. 1, 1910.

stantially like that which prevails in Great Britain. The President's authority is but nominal. The real executive consists of the ministers. These ministers are responsible, collectively in general matters and individually in particular ones, to the chambers, in reality to the Chamber of Deputies. When defeated on any important proposition, they resign as a body. Parliamentary government in France means, however, in practice, something very different from what it means across the Channel. The principal reason why this is so is to be found in the totally different status of political parties in the two countries. In Great Britain, while in later years small political groups have sprung up to complicate the situation, the political life of the nation is still confined very largely to the two great rival parties, which oppose to each other a fairly united front, and between which there is not likely to be anything like fusion or affiliation. In France, on the contrary, there is a multiplicity of parties and no one of them is likely ever to be in a position to dominate the Government alone. The election of 1910 sent to the Chamber of Deputies representatives of no fewer than nine distinct political groups. No ministry can be made up with any hope of its being able to command a working majority in the Chamber unless it represents in its membership a coalition of several parties. A Government so constituted, however, is almost inevitably vacillating and short-lived. It is unable to please all of the groups and interests upon which it relies; it dares displease none; it ends not infrequently by displeasing all.

**339. Frequency of Ministerial Changes.**—It is from this condition of things that there arises the remarkable frequency with which ministerial crises and ministerial changes take place in France. The ministry of M. Poincaré, established in January, 1912, was the forty-fifth in the history of French parliamentarism since 1875—a period of but thirty-seven years. Between 1875 and 1900 but four years elapsed without at least one change of ministry. Since 1900 changes have been somewhat less frequent. The Waldeck-Rousseau ministry of 1899–1902—the longest-lived since 1875—endured virtually three years; the Combes ministry of 1902–1905 lasted more than two years and a half; and the Clemenceau ministry of 1906–1909 fell but little short of two years and nine months. None the less, a total of nine ministries within the space of thirteen years means an average of but one year and a half to the ministry. It is but fair to say that the ordinary "crisis" is not likely to involve a complete ministerial change. Defeated in the Chamber, or unable to make progress, the ministry as a body resigns; but, as a rule, many of the members are immediately reappointed, with perhaps a change of portfolios. A certain continuity arises also

from the fact that the subordinate officials in the various departments enjoy a reasonable fixity of tenure. Nevertheless the most obvious feature of parliamentary government as it exists to-day in France, and in other continental countries, is its instability. Only where, as in England, there are two great parties, each possessing solidarity and sufficient strength, if returned to power, to support a homogeneous and sympathetic ministry, can the more desirable results of the parliamentary system be realized in full. There is as yet no evidence that such parties are in France in process of development.[1]

**340. Interpellation.**—The precariousness of the position occupied by French ministries is enhanced by the parliamentary device of interpellation. As in Great Britain, every member of the two chambers possesses the right at any time to put to an executive head a direct question concerning any affair of state which, without impropriety, may be made the subject of open discussion. A minister may not, however, be questioned without his consent, and the incident ordinarily passes without debate. In France, however, any member may direct at a minister an interpellation, designed not to obtain information, but to put the Government on the defensive and to precipitate a debate which may end in the overthrow of the ministry on some mere technicality or other matter in itself of but slight importance. The interpellation is a challenge. It is made the special order for a day fixed by the chamber, and it almost invariably results in a vote of confidence, or want of confidence, in the ministers. As employed in France, the interpellation lends itself too readily to the ends of sheer factiousness to be adjudged a valuable feature of parliamentary procedure.[2]

[1] A French scholar writes: "Power cannot pass alternately, as in England and the United States, from the party on one side over to the party in opposition. This alternation, this game of see-saw between two opposing parties, which certain theorists have declared to be the indispensable condition of every parliamentary régime, does not exist, and has never existed, in France. The reason why is simple. If the party of the Right, hostile to the Republic, should come into power, the temptation would be too strong for them to maintain themselves there by establishing an autocratic government, which would put an end to the parliamentary régime, as in 1851. The electors are conscious of this tendency of the Conservatives, and will not run the risk of entrusting the Republic to them. When they are discontented with the Republicans in power, they vote for other Republicans. Thus, new Republican groups are being ceaselessly formed, while the old ones fall to pieces." C. Seignobos, The Political Parties of France, in *International Monthly*, Aug., 1901, 155. On the French parliamentary system see Dupriez, Les Ministres, II., 345–357, 373–461; E. Pierre, Principes du droit politique électoral et parlementaire en France (Paris, 1893).

[2] Dupriez, Les Ministres, II., 432–461. L. Gozzi, L'Interpellation à l'assemblée nationale (Marseilles, 1909); J. Poudra and E. Pierre, Traité pratique de droit parlementaire, 8 vols. (Versailles, 1878–1880), VII., Chap. 4.

## III. Parliament: Senate and Chamber of Deputies

**341. The Bicameral System.**—With the dissolution of the States General in 1789, France definitely abandoned a parliamentary system based upon the mediæval principle of orders or estates. Throughout upwards of a hundred years, however, the scheme of parliamentary organization which was to take the place of that which had been cast aside continued uncertain. During the Revolution ultra-democratic reformers very generally favored the maintenance of a national assembly of but a single house, and it was not until the promulgation of the constitution of 1795 that a frame of government including provision for a legislature of two houses was brought into operation. The bicameral system of 1795–1799 was succeeded by the anomalous legislative régime of Napoleon, but under the Constitutional Charter of 1814 the two-house principle was revived and continuously applied through a period of thirty-four years. The legislative organ of the Second Republic was a unicameral assembly, but an incident of the transition to the Second Empire was the revival of a Senate, and throughout the reign of Napoleon III. the legislative chambers were nominally two in number, although it was not until 1870 that the Senate as a legislative body was made co-ordinate with the *Corps législatif*. On the whole, it can be affirmed that at the period when the constitution of the Third Republic was given form, the political experience of the nation had demonstrated the bicameral system to be the most natural, the safest, and the most effective. The opening stipulation of the Constitutional Law on the Organization of the Public Powers, adopted February 25, 1875, was that the law-making power of France should be exercised by a national parliament consisting of (1) a Chamber of Deputies and (2) a Senate. The one, it was determined, should rest upon a broadly democratic basis. The other was planned, as is customary with second chambers, to stand somewhat further removed from the immediate control of the voters of the country. But the two were intended to exist fundamentally to enact into law the will of the people, in whom the sovereignty of the French nation is clearly lodged. And even the most casual survey of the French governmental system as it operates to-day will impress the fact that the structure and organization of the parliamentary body have lent themselves to the usages of a democratic state in a measure even exceeding that intended by the founders of the existing order.

**342. The Senate as Originally Established.**—Having determined that the parliament should consist of two branches, the National Assembly,

in 1875, faced the difficult problem of constituting an upper chamber that should not be a mere replica of the lower, and yet should not inject into a democratic constitutional system an incongruous element of aristocracy. The device hit upon was a chamber, seats in which should be wholly elective, yet not at the immediate disposal of the people. By the constitutional law of February 24, 1875, it was provided that the Senate should consist of three hundred members, of whom two hundred twenty-five should be elected by the departments and colonies and seventy-five by the National Assembly itself.[1] The departments of the Seine and of the Nord were authorized to elect five senators each, the others four, three, or two, as specified in the law. The senators of the departments and of the colonies were to be elected by an absolute majority and by *scrutin de liste*, by a college meeting at the capital of the department or colony, composed of the deputies and general councillors and of delegates elected, one by each municipal council, from among the voters of the communes. Senators chosen by the Assembly were to be elected by *scrutin de liste* and by an absolute majority of votes. No one should be chosen who had not attained the age of forty years, and who was not in enjoyment of full civil and political rights. The seventy-five elected by the Assembly were to retain their seats for life, vacancies that should arise being filled by the Senate itself. All other members were to be elected for nine years, being renewed by thirds every three years.

**343. The Senate: Composition and Election To-day.**—The system thus devised continues, in the main, in effect at the present day. The principal variations from it are those introduced in a constitutional law of December 9, 1884, whereby it was provided (1) that the co-optative method of election should be abolished, and that, while present life members should retain their seats as long as they should live, all vacancies thereafter arising from the decease of such members should be filled within the departments in the regular manner, and (2) that the electoral college of the department should be broadened to include not merely one delegate from each municipal council, but from one to twenty-four (thirty in the case of Paris), according to the number of members in the council.[2] By the same law members of families that have reigned in France were declared ineligible; and by act of July 20, 1895, no one may become a member of either branch of Parliament unless he has complied with the law regarding military service.

Few of the life members survive to-day. When they shall have disappeared, the French Senate will comprise a compact body of

[1] Dodd, Modern Constitutions, I., 288.
[2] Ibid., I., 310.

three hundred men apportioned among the departments in approximate accordance with population and chosen in all cases by bodies of electors all of whom have themselves been elected directly by the people. The present apportionment gives to the department of the Seine ten members; to that of the Nord, eight; to others, five four, three, and two apiece, down to the territory of Belfort and the three departments of Algeria, and the colonies of Martinique, Guadeloupe, Reunion, and the French West Indies, which return one each. From having long been viewed by republicans with suspicion, the Senate has come to be regarded by Frenchmen generally as perhaps the most perfect work of the Republic.[1] In these days its membership is recruited very largely from the Deputies, so that it includes not only many men of distinction in letters and science but an unusual proportion of experienced debaters and parliamentarians. A leading American authority has said that it is "composed of as impressive a body of men as can be found in any legislative chamber the world over."[2] The sittings of the Senate, since 1879, have been held in the Palais du Luxembourg, a splendid structure on the left bank of the Seine dating from the early seventeenth century.[3]

**344. The Chamber of Deputies: Composition.**—The 597 members of the lower legislative branch are chosen directly by the people, under conditions regulated by a series of electoral measures, principally the organic law of November 30, 1875.[4] The franchise is extended to all male inhabitants who have attained the age of twenty-one, and who are not convicts, bankrupts, under guardianship, or in active military or naval service. Of educational or property qualifications there are none. The only requirements are that the voter shall have his name inscribed on the electoral lists and shall be able to prove a residence of six months in the commune in which he proposes to cast his ballot. The conditions of the franchise are prescribed by the state; but the keeping and the annual revision of the electoral lists devolves upon the commune, and the lists are identical for communal, district, departmental, and national elections. The French registration system is notably effective and, as compared with the British, inexpensive.

**345. Electoral Unit and Parliamentary Candidacies.**—The electoral area in France is the arrondissement, an administrative sub-

[1] J. C. Bracq, France under the Republic (New York, 1910), 8.

[2] Lowell, Governments and Parties, I., 22. But compare the view set forth in J. S. C. Bodley, France, 2 vols. (London, 1898), I., 46–60.

[3] O. Pyfferoen, Du sénat en France et dans les Pays-Bas (Brussels, 1892).

[4] Dodd, Modern Constitutions, I., 302–308.

division of the department. Each arrondissement returns one deputy, unless its population exceeds 100,000, in which case it is divided into single-member constituencies, one for each 100,000 or remaining fraction thereof. A fresh apportionment is made after each quinquennial census, when to each of the eighty-six departments is allotted a quota of representatives proportioned to population. The present method of election, under which the individual elector votes within his arrondissement or district for one deputy only, is known as the *scrutin d'arrondissement*. Established in 1876, the *scrutin d'arrondissement* was employed until 1885, when, at the behest of Gambetta, a change was made to a system under which deputies for an entire department were voted for on a general ticket, as, for example, presidential electors are voted for in an American state. This system—the so-called *scrutin de liste*—was maintained in operation only until 1889, when the *scrutin d'arrondissement* was re-established.[1]

The full membership of the Chamber is elected simultaneously, for a four-year term, save in the event that the Chamber shall be sooner dissolved. No nomination, or similar formality, is required of the candidate. To be eligible, however, he must be a qualified voter and as much as twenty-five years of age. By law of November 30, 1875, state officials are forbidden to become candidates in districts where their position might enable them to influence elections, and by act of June 16, 1885, members of families who have ever reigned in France are debarred. All that is required of a person who, possessing the requisite legal qualifications, wishes to be a candidate is that five days before the election he shall deposit with the prefect of the department within which the polling is to take place a declaration, witnessed by a mayor, of the name of the constituency in which he proposes to seek election. Even this trifling formality was introduced only by the Multiple Candidature Act of 1889, by which it is stipulated that no person shall be a candidate in more than one district. The French electorate is proverbially indifferent concerning the exercise of the suffrage, but the methods of campaigning which have become familiar in other countries are employed systematically, and no small measure of popular interest is occasionally aroused.[2]

[1] Laws of June 16, 1885, and February 13, 1889; Dodd, Modern Constitutions, I., 316–318.

[2] "During the electoral period, circulars and platforms signed by the candidates, electoral placards and manifestoes signed by one or more voters, may, after being deposited with the public prosecutor, be posted and distributed without previous authorization." Organic Law of November 30, 1875, Art. 3.

**346. The Conduct of Parliamentary Elections.**—The electoral process is simple and inexpensive. Voting is by secret ballot, and the balloting lasts one day only. As a rule, the polling takes place in the *mairie*, or municipal building, of the commune, under the immediate supervision of an electoral bureau consisting of a president (usually the mayor), four assessors, and a secretary. The state does not provide ballot-papers, but one or more of the candidates may be depended upon to supply the deficiency. The count is public and the result is announced without delay. If it is found that no candidate within the district has polled an absolute majority of the votes cast, and at the same time a fourth of the number which the registered voters of the district are legally capable of casting, a second balloting (the so-called *ballottage*) is ordered for one week from the ensuing Sunday. No one of the candidates voted for drops out of the contest, unless by voluntary withdrawal; new candidates, at even so late a day, may enter the race; and whoever, at the second balloting, secures a simple plurality is declared elected. By observers generally it is considered that the principle of the second ballot, in the form in which it is applied in France, possesses no very decisive value. Through a variety of agencies the central government is accustomed to exert substantial influence in parliamentary elections; but all of the more important political groups have profited at one time or another by the practice, and there is to-day a very general acquiescence in it, save on the part of unsuccessful candidates whose prospects have been injured by it.

## IV. The Problem of Electoral Reform

**347. Scrutin de liste and scrutin d'arrondissement.**—Within recent years there has arisen, especially among the Republicans and Socialists, an insistent demand for a thoroughgoing reform of the electoral process. Those who criticise the present system are far from agreed as to precisely what would be more desirable, but, in general, there are two preponderating programmes. One of these calls simply for abandonment of the *scrutin d'arrondissement* and a return to the *scrutin de liste*. The other involves both a return to the *scrutin de liste* and the adoption of a scheme of proportional representation. The arrondissement, many maintain, is too small to be made to serve satisfactorily as an electoral unit. Within a sphere so restricted the larger interests of the nation are in danger of being lost to view and political life is prone to be reduced to a wearisome round of compromise, demagogy, and trivialities. If,

it is contended, all deputies from a department were to be elected on a single ticket, the elector would value his privilege more highly, the candidate would be in a position to make a more dignified campaign, and issues which are national in their scope would less frequently be obscured by questions and interests of a petty and purely local character. Professor Duguit, of the University of Bordeaux, who is one of the abler exponents of this proposed reform, contends (1) that the scheme of *scrutin de liste* harmonizes better than does that of *scrutin d'arrondissement* with the fundamental theory of representation in France, which is that the deputies who go to Paris do so as representatives of the nation as a whole, not of a single locality; (2) that the *scrutin d'arrondissement* facilitates corruption through the temptation which it affords candidates to make to voters promises of favors, appointments, and decorations, and (3) that the prevailing system augments materially the more or less questionable influence which the Government is able to bring to bear in the election of deputies.[1] It does not appear that in the period 1885–1889 when the *scrutin de liste* was in operation the very desirable ends now expected to be attained by a restoration of it were realized; indeed the system lent itself more readily to the menacing operations of the ambitious Boulanger than the *scrutin d'arrondissement* could possibly have done. It is but fair, however, to observe that the trial of the system was very brief and that it fell in a period of unusual political unsettlement.

**348. Proportional Representation.**—In the judgment of many reformers a simple enlarging of the electoral unit, however desirable in itself, would be by no means adequate to place the national parliament upon a thoroughly satisfactory basis. There is in France a growing demand for the adoption of some scheme whereby minorities within the several departments shall become entitled to a proportionate voice in the Chamber at Paris. And hence a second programme of reform is that which calls not merely for the *scrutin de liste*, but also for proportional representation. Within the past two decades the spread of the proportional representation idea in Europe has been rapid. Beginning in 1891, the device has been adopted by one after another of the Swiss cantons, until now it is in use in some measure in upwards of half of them. Since 1899 Belgium has employed it in the election of all members of both chambers of her parliament. In 1906 it was adopted by Finland and by the German state of Württemberg. In 1908 Denmark, in which country the system has been employed in the election of

[1] L. Duguit, Traité de droit constitutionnel, I., 375–376.

members of the upper chamber since 1867, extended its use to elections in the municipalities.[1] In 1907 an act of the Swedish parliament (confirmed after a general election in 1909) applied it to elections for both legislative chambers, all parliamentary committees, and provincial and town councils. In France there was organized in 1909, under the leadership of M. Charles Benoist, a Proportional Representation League by which there has been carried on in recent years a very vigorous and promising propaganda. The principal arguments employed by the advocates of the proposed reform are (1) that the effect of its adoption would be greatly to increase the aggregate vote cast in parliamentary elections, since electors belonging to minority parties would be assured of actual representation; (2) that it would no longer be possible, as is now regularly the case, for the number of voters unrepresented by deputies of their own political faith to be in excess of the number of electors so represented;[2] and (3) that a parliament in which the various parties are represented in proportion to their voting strength can be depended upon to know and to execute the will of the nation with more precision than can a legislative body elected after the principle of the majority system.[3]

**349. The Government and Reform.**—During upwards of a decade the successive ministries of France have been committed to the cause of electoral reform. In March, 1907, a special committee of the Chamber of Deputies (the *Commission du Suffrage Universel*), appointed to consider the various bills which had been submitted upon the subject, reported a scheme of proportional representation whereby it was believed certain disadvantages inherent in the "list system" of Belgium might be obviated. Elections were to be by *scrutin de liste* and the elector was to be allowed to cast as many votes as there were places to be filled and to concentrate as many of these votes as he might choose upon a single candidate.[4] In November, 1909, the Chamber of Deputies

[1] The first English-speaking state to adopt the system was Tasmania, where, after being in partial operation in 1896–1901, it was brought fully into effect in 1907. By an electoral law of 1900 Japan adopted it for the election of the members of her House of Commons. The plan was put in operation in Cuba April 1, 1908, and was adopted in Oregon by a referendum of June 1, 1908.

[2] It is the assertion of M. Benoist that this situation has existed unbrokenly since 1881. An interesting fact cited is that the notable Separation Law of 1905 was adopted in the Chamber by the votes of 341 deputies who represented in the aggregate but 2,647,315 electors in a national total of 10,967,000.

[3] Duguit, *op. cit.*, argues forcefully in behalf of the proposed change. For adverse views, cogently stated by an equally eminent French authority, see A. Esmein, Droit Constitutionnel (5th ed., Paris, 1911), 253.

[4] The text of the proposed measure, in English translation, will be found in J. H. Humphreys, Proportional Representation (London, 1911), 382–385.

passed a resolution favoring the establishment of both *scrutin de liste* and proportional representation, but no law upon the subject was enacted, and at the elections of April–May, 1910, the preponderating issue was unquestionably that of electoral reform. According to a tabulation undertaken by the Ministry of the Interior, of the 597 deputies chosen at this time 94 had not declared themselves on electoral reform; 35 were in favor of no change from the existing system; 32 were in favor of a slightly modified *scrutin d'arrondissement;* 64 were partisans of the *scrutin de liste* pure and simple; 272 were on record in favor of the *scrutin de liste* combined with proportional representation; and 88 were known to be in favor of electoral reform, though not committed to any particular programme. The majority favoring change of some kind was thus notably large.

**350. The Briand Programme.**—June 30, 1910, the Briand ministry brought forward a plan which was intended as an alternative to the proposals of the Universal Suffrage Committee. The essential features of it were: (1) a return to *scrutin de liste*, with the department as the electoral area, save that a department entitled to more than fifteen deputies should, for electoral purposes, be divided, and one entitled to fewer than four should be united with another; (2) an allotment of one deputy to every 70,000 inhabitants, or major fraction thereof; (3) the division of the total number of electors on the register within a department by the number of deputies to which the department should be entitled, the quotient to supply the means by which to determine the number of deputies returned to the Chamber from each competing ticket; (4) the determination of this number by a division of the foregoing quotient into the average number of votes obtained by the candidates on each competing ticket, thus introducing the element of proportional representation; (5) the making up of tickets in each department from candidates nominated by one hundred electors; (6) the restriction of each elector to a vote for but a single ticket; and (7) an extension of the life of the Chamber from four to six years, one-third of the members to be chosen biennially. In the ministerial declaration accompanying the announcement of this scheme Premier Briand declared that the effect of the *scrutin d'arrondissement* had been to narrow the political horizon of the deputies; that the electoral area must be broadened so that the interests of the nation may be made to predominate over those of the district; and that, while in a democracy the majority must rule, the Government was favorable to proportional representation in so far as the adoption of that principle can prevent the suppression of really important minorities.

**351. The Electoral Reform Bill of 1912.**—In February, 1911, while

the Briand Electoral Reform Bill was pending, there occurred a change of ministries. The Monis government which succeeded maintained, during its brief tenure (March–June, 1911), the sympathetic attitude which had been exhibited by its predecessor, and at the beginning of the period the *Commission du Suffrage Universel* laid before the Chamber the draft of a new bill whereby the details of the proportional plan were brought back into closer accord with those of the Belgian system. During the period of the Caillaux ministry (June, 1911, to January, 1912) there was continued discussion, but meager progress. The Poincaré ministry, established at the beginning of 1912, declared that the nation had expressed forcefully its desire for far-reaching reform and promised that, in pursuance of the work already accomplished by the parliamentary commission, it would take steps to carry a measure of reform which should "secure a more exact representation for political parties and lend those who are elected the freedom that is required for the subordination of local interests in all cases to the national interest." During the earlier months of 1912 consideration of the subject was pressed in the Chamber and July 10 the whole of the Government's Electoral Reform Bill was adopted by a vote of 339 to 217. At the date of writing (October, 1912) the measure is pending in the Senate. The bill as passed in the Chamber comprises essentially the Briand proposals of 1910.[1] Through the revival of *scrutin de liste*, with a large department or a group of small ones as the electoral area, and with the device of

[1] The most systematic account of the electoral franchise in France since 1789 is A. Tecklenburg, Die Entwickelung des Wahlrechts in Frankreich seit 1789 (Tübingen, 1911). The French electoral system is described at length in E. Pierre, Code des élections politiques (Paris, 1893); Chaute-Grellet, Traité des élections, 2 vols. (Paris, 1897); M. Block, Dictionnaire de l'administration française (5th ed., Paris, 1905), I., 1208–1244. The literature of the subject of electoral reform is very extensive. Mention may be made of C. Benoist, Pour la réforme électorale (Paris, 1908); J. L. Chardon, La réforme électorale en France (Paris, 1910); J. L. Breton, La réforme électorale (Paris, 1910); C. Francois, La représentation des intérêts dans les corps élus (Paris, 1900); F. Faure, La législature qui finit et la réforme électorale, in *Revue Politique et Parlementaire*, Dec. 10, 1909; Marion, Comment faire la réforme électorale, ibid., Feb. 10 and March 10, 1910; M. Deslanders, La réforme électorale, ibid., July 10, 1910; A. Varenne, La réforme électorale d'abord, ibid., Nov. 10, 1910; G. Lachapelle, La discussion du projet de réforme électorale, ibid., May 10, 1912; F. Faure, Le vote de la réforme électorale, ibid., Aug. 10, 1912 (contains the text of the Electoral Law); L. Milhac, Les partis politiques français dans leur programme et devant le suffrage, in *Annales des Sciences Politiques*, July 15, 1910; G. Scelle, La représentation politique, in *Revue du Droit Public*, July–Sept., 1911; L. Marin, Le vote personnel, in *La Grande Revue*, March 25, 1911; and G. Trouillot, La réforme électorale au Sénat, ibid., Sept. 25, 1912. The text of the bill of 1912 is to be found also in *Revue du Droit Public*, July–Sept., 1912. On the question of proportional representation see G. Tronqual, La représentation proportionnelle devant le parlement français (Poitiers, 1910); F. Lépine, La représen-

representation of minorities added, the measure, in the event of its probable final enactment, will largely transform the conditions under which the parliamentary elections of to-day are conducted.

tation proportionnelle et sa solution (Paris, 1911); N. Saripolos, La démocratie et l'élection proportionnelle (Paris, 1900); G. Lachapelle, La représentation proportionnelle (Paris, 1910); ibid., Représentation proportionnelle, in *Revue de Paris*, Nov. 15, 1910; ibid., L'Application de la représentation proportionnelle, in *Revue Politique et Parlementaire*, Dec. 10, 1910. See also Anon., La sophistication du suffrage universel, in *Annales des Sciences Politiques*, July, 1909, and May, 1910; E. Zevort, La France sous le régime du suffrage universel (Paris, 1894). The subject of proportional representation in France is fully discussed in a Report of the British Royal Commission on Electoral Systems (1910). Report, Cd. 5,163; Evidence, Cd. 5,352.

# CHAPTER XVII

## PARLIAMENTARY PROCEDURE—POLITICAL PARTIES

### I. Organization and Workings of the Chambers

**352. Sessions.**—By the constitutional law of July 16, 1875, it is required that the Chamber of Deputies and the Senate shall assemble annually on the second Tuesday of January, unless convened at an earlier date by the President of the Republic, and that they shall continue in session through at least five months of each year. The President may convene an extraordinary session, and is obligated to do so if at any time during a recess an absolute majority of both chambers request it. The President may adjourn the chambers, but not more than twice during the same session, and never to exceed one month. The sessions of the Deputies are held in the Palais Bourbon, situated in the immediate neighborhood of a group of ministerial buildings at the end of the Boulevard St. Germain, directly across the Seine from the Place de la Concorde; those of the Senate, in the Palais du Luxembourg. The sittings are by law required to be public, though there is provision for occasional secret sessions. Since January 1, 1907, deputies have received 15,000 francs a year (increased by law of November, 1906, from 9,000); and they are entitled, on payment of a nominal sum, to travel free on all French railways. The emoluments of senators are identical with those of deputies.

**353. Officers, Bureaus, and Committees.**—The presiding officer of the Deputies is known as the president. He is elected by the Chamber and, far from being a mere moderator, as is the Speaker of the British House of Commons, he is ordinarily an aggressive party man, not indisposed to quit the chair to participate in debate, and therefore bearing an interesting resemblance to the Speaker of the American House of Representatives. Besides the president, there are four vice-presidents, eight secretaries, and three questors, all chosen by the Chamber. The vice-presidents replace the president upon occasion; the secretaries (of whom half must always be on duty when the Chamber is in session) supervise the records of the meetings and count the votes when there is a division; the questors have in charge the Chamber's finances. Collectively, this group of sixteen officials comprises what is known as the

"bureau" of the Chamber. It manages the business of the body during a session and, if need be, acts in its name during a recess.

Every month during the course of a session the entire membership of the Chamber is divided by lot into eleven other bureaus of equal size. These bureaus meet from time to time separately to examine the credentials of members, to give formal consideration to bills which have not yet been referred to a committee, and, most important of all, to select one of their number to serve on each of the committees of the Chamber. In the case of very important committees, the bureaus may be instructed by the Chamber to designate two members, or even three, each. Thus, the Budget Committee contains three representatives of each bureau. This committee and another constituted to audit the accounts of the Government are created for a year. Others serve a single month. Theoretically, indeed, every measure is referred to a committee constituted specifically for the purpose; but practically the consequence of such a procedure would be confusion so gross that the greater committees, as those on labor, railways, and the army, are allowed to acquire some substantial measure of permanence. Committee positions are quite generally objects of barter on the part of party groups and leaders.[1]

**354. Procedure.**—Immediately upon assembling, each of the chambers validates the elections of its own members, chooses its bureau of president, vice-presidents, secretaries, and questors, and adopts its own rules of procedure. At an early date the premier communicates orally a "ministerial declaration," in which are outlined the policies to which the Government is committed; and certain of the measures therein proposed are likely to take precedence in the ensuing deliberations. The hall in which each body sits is semi-circular, with as many seats and desks as there are members to be accommodated. In the centre stands a raised arm-chair for the use of the president, and in front of it is a platform, or "tribune," which every member who desires to speak is required to mount. On either side of the tribune are stationed stenographers, whose reports of the proceedings are printed each morning in the *Journal Officiel*. The first tier of seats in the semi-circle, facing the tribune, is reserved for the Government, i. e., the members of the ministry; behind are ranged the remaining members of the Chamber, with the radicals on the president's left and the conservatives on his right.

Of the bureaus into which, at the beginning of each month, the members of each chamber are divided, there are, as has been said, eleven in

[1] A. de la Berge, Les grands comités parlementaires, in *Revue des Deux Mondes*, Dec. 1, 1889.

the Deputies; in the Senate there are nine. When a bill is introduced it is referred first of all to these bureaus, each of which designates one or more commissioners, who, acting together as a committee, are expected to make a careful examination of the measure. The report of this committee is printed and distributed, whereupon general discussion begins in the chamber. Every measure must pass two readings in each chamber, with an interval of five days, unless otherwise ordered by a majority vote. A member wishing to take part in the debate indicates his desire by inscribing his name on lists kept by the secretaries. On the motion of any member, the closure may be applied and a vote ordered. The division may be taken by a show of hands, by rising, or by a ballot in which a white voting paper denotes an affirmative, and a blue one a negative, vote. Voting by proxy, long permitted, has been recently abolished. No decision is valid unless an absolute majority of the members (151 in the Senate and 299 in the Deputies) has participated in the vote. In the upper branch proceedings are apt to be slow and dignified; in the lower they are more animated, and not infrequently tempestuous. The duty of keeping order at the sittings falls to the president. In aggravated cases he is empowered, with the consent of a majority of the chamber, to administer a reprimand carrying with it temporary exclusion from the sessions.[1]

**355. Powers and Functions: the National Assembly.**—Speaking broadly, the functions of the French chambers are three-fold—constituent, elective, and legislative. The first two are required to be exercised by the two houses conjointly. By the constitutional law of February 25, 1875, there is provided the only means whereby the constitution of the Republic may be amended. "The chambers," it is stipulated, "shall have the right by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the Republic, to declare a revision of the constitutional laws necessary. After each of the two chambers shall have come to this decision, they shall meet together in National Assembly to proceed with the revision. The acts affecting revision of the constitutional laws, in whole or in part, shall be passed by an absolute majority of the members composing the National Assembly."[2] The power of constitutional amendment is therefore vested absolutely in the parliamen-

[1] A. P. Usher, Procedure in the French Chamber of Deputies, in *Political Science Quarterly*, Sept., 1906; J. S. Crawford, A Day in the Chamber of Deputies, in *Gunton's Magazine*, Oct., 1901; M. R. Bonnard, Les modifications du réglement de la Chambre des Députés, in *Revue du Droit Public*, Oct.–Dec., 1911. The standard treatise on French parliamentary procedure is J. Poudra et E. Pierre, Traité pratique de droit parlementaire, 8 vols. (Versailles, 1878–1880.)

[2] Art. 8. Dodd, Modern Constitutions, I., 288.

tary chambers, under the requirement simply that it be exercised in joint session. The only limitation that has been imposed on parliamentary omnipotence in this direction is a clause adopted in an amendment of August 13, 1884, to the effect that "the republican form of government shall not be made the subject of a proposed revision." [1] As in the British system, constituent and legislative powers are lodged in the same body of men; and not merely the powers of constitution-making, but the exclusive right to pronounce upon the constitutionality or unconstitutionality of legislation. The principal difference is that, whereas the British Parliament exercises the sum total of its powers in an unvarying manner, the French, when acting in its constituent capacity, follows a specially designed procedure.

One other function the two chambers sitting conjointly possess, i. e., that of electing the President of the Republic. Under normal conditions, the chambers are called together in National Assembly to choose a President one month or more before the expiration of the seven-year presidential term. In the event of vacancy by death, by resignation, or by reason of any other unanticipated circumstance, the meeting of the Assembly takes place forthwith, without summons.[2] Election is by ballot, and by absolute majority of the members. All meetings of the National Assembly are held, not in Paris, but in the old royal palace at Versailles, which indeed was the sole seat of the present republican government until 1879. No elective session may exceed in length the five months allotted to an ordinary legislative session.

**356. Legislation and Special Powers.**—The two chambers possess concurrent powers in all that pertains to the initiation, the enactment, and the amending of laws, save that money bills must be introduced in and passed by the Chamber of Deputies before being considered in the upper branch. Except for this limitation, measures may be presented in either house, by the ministers in the name of the President, or by private members. The vast fabric of Napoleonic law which has survived to the present day in France has narrowed perceptibly the range of legislative activity under the Republic. During the first generation after 1871 few great statutes were enacted, save those of a constitutional character. In our own day, however, the phenomenal expansion of social and industrial legislation, which has been a striking feature of the public life of most European nations, has imparted a new vigor and productiveness to French parliamentary activity.

Each of the chambers possesses certain functions peculiar to itself. Aside from the initiation of money bills, the principal such function

[1] Art. 8. Dodd, Modern Constitutions, I., 294.

[2] Law of July 16, 1875, art. 3. Dodd, Modern Constitutions, I., 291.

of the Deputies is the bringing of charges of impeachment against the President or ministers. The Senate possesses the exclusive power to try cases of impeachment. It is given the right to assent or to withhold its assent when the President proposes to dissolve the Chamber of Deputies before the expiration of its term. And by decree of the President, issued in the Council of Ministers, it may be constituted a court of justice to try any person accused of attempts upon the safety of the state.[1]

## II. Political Parties since 1871

**357. Republicans and Conservatives.**—In its larger aspects the alignment of political parties in France to-day dates from the middle of the nineteenth century. In the National Assembly of 1848—the first representative body elected in France by direct universal suffrage—the line was sharply drawn between the republicans of the Left, who wished to maintain the Republic and with it a liberal measure of democracy, and the reactionaries of the Right, who began by insisting upon a restoration of clerical privilege and bourgeois rule and ended, in the days of the Legislative Assembly, by clamoring for a restoration of monarchy itself. After the *coup d'état* of 1851 both groups were silenced, though even in the politically stagnant era of the early Empire they did not lose altogether their identity. With the revival, however, after 1860, of a vigorous political life the two worked together, and with success, to accomplish the overthrow of the personal government of Napoleon III. Upon the collapse of the Empire in 1870 the original cleavage reappeared. The National Assembly elected in 1871 was divided broadly into Republicans and Conservatives (which name gradually replaced that of Reactionaries), and during the five years covered by the life of this extremely important body these two great groups struggled continuously over the supreme question of the day, i. e., the style of government which should be adopted permanently for France. Each of the groups comprised a variety of elements. To the Republicans belonged the Radical Extreme Left of Gambetta, the Left of Grévy, Freycînet, and Loubet, and the Centre Left of Thiers and Jules Simon. To the Conservatives belonged the Legitimate Extreme Right, an Orleanist Centre Right, and, eventually, the Imperialists. Following the definite establishment, in 1875, of the republican constitution, the lines by which these various elements had been marked off grew less distinct, and Republicans and Conservatives acquired in each case a more homogeneous character.

[1] Y. Guyot, Relations between the French Senate and Chamber of Deputies, in *Contemporary Review*, Feb., 1910.

**358. Rise of the Radicals.**—After the first election under the new constitution—that of 1876—the Senate remained in the control of the Conservatives, but the Chamber of Deputies was found to contain a Republican majority of more than two to one. From that day until the present the Republican ascendancy in the lower house has been maintained uninterruptedly; and since 1882 there has been likewise always a Republican majority in the Senate. It is to be observed, of course, that Republican control in both chambers has meant regularly not the absolute dominance of a single compact party group, but the preponderance of a coalition of two or more groups broadly to be described as "republican." During the early eighties there sprang up a flourishing group which, reviving the original programme of Gambetta, assumed the name Radical, and in the elections of 1885 this group acquired such a quota of seats in the Chamber (150) as to render it impossible for the Republicans alone to retain control. Thereafter there were three principal party groups—the Conservatives and the two republican groups, the Republicans proper and the Radicals. No one of the three being sufficiently strong to obtain a majority which would enable it to rule alone, the politics of a long succession of years turned upon the adoption of one or the other of two lines of tactics—the coalition of the two republican divisions to the end that they might rule as against a Conservative minority (the so-called policy of "republican concentration"), and the allying of one of these groups with the Right against the other Republican group (spoken of commonly as a "pacification"). The first "concentration" ministry was that of Brisson, formed in March, 1885; the first "pacification" ministry was that of Rouvier, formed in 1887. In the middle of the nineties some attempts were made to create and maintain homogeneous ministries. The Bourgeois ministry of 1895–1896 was composed entirely of Radicals and the Méline ministry of 1896–1898 of Moderate Republicans. But at the elections of 1898 the Republican position in the Chamber broke down and it was necessary to return, with the Dupuy ministry, to the policy of concentration.

Meanwhile, in the early nineties, from the Conservative and Republican extremes respectively had been detached two new party groups. From the ranks of the Conservatives had sprung a body of Catholics who, under papal injunction, had declared their purpose to rally to the support of the Republicans; whence they acquired the designation of the "Ralliés." And from the Radical party had broken off a body of socialists of such consequence that in the elections of 1893 it succeeded in carrying fifty seats.

**359. The Bloc.**—A new era in the history of French political parties was marked by the elections of May, 1898. Some 250 seats, and with them the effectual control of the Chamber, were acquired by the Radicals, the Socialists, and an intermediary group of Radical-Socialists. The Moderate Republicans, to whom had been given recently the name of Progressives, were reduced to 200; while the Right retained but 100. The Socialists alone polled nearly twenty per cent of the total popular vote. The remarkable agitation by which the Dreyfus affair was attended had the effect of consolidating further the parties of the Left, and the *bloc* which resulted not only has subsisted steadily from that day to the present but has controlled very largely the policies of the government. The first conspicuous leader and spokesman of the coalition was Waldeck-Rousseau, premier from 1899 to 1902, and its first great achievement was the separation of church and state, accomplished through the means of the Law of Associations of July 1, 1901, the abrogation of the Concordat, December 9, 1905, and the law of January 2, 1907, restricting further the privileges of the Roman Catholic Church in France. A socialist now appeared for the first time in the cabinet. At the elections of April, 1902, the policies of the Government were vindicated by the return of 321 avowed "ministerialists" and of but 268 representatives of the opposition.

**360. The Elections of 1906.**—June 3, 1902, the longest-lived ministry since the Third Republic was established was brought to an end by the voluntary retirement of Waldeck-Rousseau. The new premier, Combes, was a member of the Radical party, and the anti-clerical, radical policies of the preceding government were maintained throughout the ensuing two and a half years, as also they were during the premiership of Rouvier (1905–1906). In March, 1906, a new ministry, in which Clemenceau was actual chief, was formed with the Radical Sarrien as premier, and at the elections which came two months later the groups of the Left won another signal victory. Prior to the balloting the majority in support of the radical policy of the Government *bloc* could muster in the Chamber some 340 votes; afterwards, it could muster at least 400. The Right retained its numerical strength (about 130), but the extreme Left made decided gains at the expense of the moderates, or Progressives. The number of Progressive seats, 120 prior to the election, was reduced by half; while the aggregate of Socialist and Radical-Socialist seats rose to 230. On all sides Moderate Republicanism fell before the assaults of Socialism. At the same time it was demonstrated unmistakably that the anti-clerical measures of the recent governments were in substantial accord with the

will of the nation. October 25, 1906, Clemenceau assumed the premiership.

**361. The Elections of 1910.**—The Clemenceau ministry, which survived until July, 1909, adopted a programme which was more frankly socialistic than was that of any of its predecessors. It added to the system of state-owned railways the Great Western Line; it inaugurated a graduated income tax and put the measure in the way of enactment at the hand of the Chamber; it carried fresh and more rigorous legislation in hostility to clericalism; and, in general, it gave free expression to the unquestionable trend of the France of to-day away from the individualism of the Revolutionary period in the direction of the ideals of collectivism. The Briand ministry by which it was succeeded followed in the same lines, three of its members, indeed, being active socialists. Prior to the elections of April–May, 1910, there took place some readjustment of political forces, but, on the whole, no change of large importance. The *bloc*, however, more than once showed signs of breaking up, and the majority of the party groups arrived at the electoral season devoid of harmony and paralyzed by uncertainty of policy. The Radicals were divided upon the question of the income-tax; the Socialists, upon the question of the party's attitude toward trade-unions; and all parties, upon the issue of proportional representation. That the voters were no less bewildered than were the party leaders appeared from the fact that in 231 constituencies—almost an unprecedented number [1]—second ballotings were required. With the issues so confused, the results could hardly prove of large significance. The lines which separate party groups to-day in France are not infrequently both ill-defined and shifting, with the consequence that it is not possible to express party strength by exact numbers, as may be done in the case of the parties of Great Britain or of the United States. A deputy may even belong to two groups at one time. The composition of the Chamber following the elections of 1910 can be stated, therefore, only approximately. Composing the Right were (1) the Right proper, 19; (2) the Action Libérale Populaire—organized originally to combat the radicalism of Waldeck–Rousseau, 34; (3) the Progressives, now to be identified with the Right, 76—a total of 129. Identified with the Left were (1) the Republicans, 73; (2) the Radicals, 112; and (3) the Radical-Socialists, 149—a total of 334. Comprising the Extreme Left were the Socialists (Independent 30; Unified, 75), aggregating 105. Finally, of Independents there were upwards of 20. The continued preponderance of the Left was assured, although to prolong their mastery of the situation the Rad-

[1] Absolutely so, save for the *scrutin de liste* election of 1885.

icals and Radical-Socialists fell under the necessity of securing the support of either the Republicans or the Independent Socialists.[1]

**362. Changes since 1871.**—"The political history of France since the beginning of the Republic," says a scholarly French observer, "presents, instead of an alternation between two parties of opposing programmes, like those of Belgium or England, a continual evolution along one line, the constant growth of the strength of parties which represent the democratic, anti-clerical tendency." [2] The fundamental division of Conservative and Republican persists, but both of these terms have long since lost their original definiteness of meaning. The Conservatives have ceased, in large part, to be "reactionaries." Few of them are even royalists, and the old distinction of Legitimist, Orleanist, and Bonapartist has disappeared entirely. The Right is essentially "republican," as is evidenced by the further fact that the majority of its members in the Chamber are Progressives, whose forerunners composed the real Republican party of a generation ago. The Republican groups of to-day comprise simply those numerous and formidable political elements which are *more* republican—that is to say, more radical—than are the adherents of the Right. Among themselves, however, they represent a very wide gradation of radicalism.

**363. French Socialism.**—The history of socialism in France since 1871 has been stormy. During the seventies proselyting effort was directed chiefly toward the influencing of the trade-unions to declare for socialism. In 1879 the general trade-union congress at Marseilles took the desired step, but in the congress of the following year at Havre there arose a schism between the "collectivists" and the "co-operatives" which in reality has never been healed. During the eighties and nineties the process of disintegration continued, and there came to be a half-dozen socialist parties, besides numerous local groups of independents. During the years 1898–1901 continued effort was made to bring the various socialist elements into some sort of union, and in 1900 a national congress of all French socialist parties

[1] The political history of the period since the elections of 1910 has been remarkable by reason chiefly of the absorption of public attention by the issues of electoral reform and labor legislation. Embarrassed by interpellations with reference to its ecclesiastical policy, the Briand ministry (reconstituted in November, 1910) retired in February, 1911. The Monis government which succeeded lacked coherence, as also did the ministry of Caillaux (June, 1911 to January, 1912). The cardinal achievement of the Poincaré ministry has been the carrying of the Electoral Reform Bill of 1912 in the lower chamber. See p. 323.

[2] C. Seignobos, The Political Parties of France. in *International Monthly*, Aug., 1901, 155.

and organizations was held at Paris. An incident of the Dreyfus controversy was the elevation of an independent socialist, Ètienne Millerand, to a portfolio in the ministry of Waldeck-Rousseau, and this event became the occasion of a new socialist breach. The Parti Socialist Français, led by the elequent Jaurès, approved Millerand's opportunism; the Parti Socialist de France opposed. In 1905, however, these two bodies were amalgamated in the Parti Socialist of the present day, with a programme which calls for the socializing of the means of production and exchange, i. e., the transforming of the capitalistic organization of society into a collectivist or communistic organization. The means by which the party proposes to bring about the transformation is the industrial and political organization of the working classes. In respect to its aim, its ideals, and its means, the French Socialist party, while ready to support the immediate reforms demanded by laboring people, is to a greater degree than the German Social Democracy a party of class struggle and revolution. In 1885, when the French socialists waged their first campaign in a parliamentary election, the aggregate number of socialist votes was but 30,000. By 1889 the number had been increased to 120,000; by 1898 to 700,000; and by 1906 to 1,000,000. At the election of 1910 the popular vote was increased by 200,000, and the number of socialist deputies was raised to a total of 105. Within recent years socialism, formerly confined almost wholly to the towns and cities, has begun to take hold among the wage-earners, and even the small proprietors, in the rural portions of the country.[1]

[1] The best accounts in English of the French parties and party system are Lowell, Governments and Parties, I., Chap. 2; Bodley, France, Book IV., Chaps. 1–8; and C. Seignobos, The Political Parties of France, in *International Monthly*, Aug., 1901. The last-mentioned is brief, but excellent. A valuable work is P. Laffitte, Le suffrage universel et la régime parlementaire (2d ed., Paris, 1889). Among useful articles may be mentioned: J. Méline, Les partis dans la république, in *Revue Politique et Parlementaire*, Jan., 1900; M. H. Doniol, Les idées politiques et les partis en France durant le XIX.e siècle, in *Revue du Droit Public*, May–June, 1902; and A. Charpentier, Radicaux et socialistes de 1902 à 1912, in *La Nouvelle Revue*, May 1, 1912. On socialism in France see J. Peixotto, The French Revolution and Modern French Socialism (New York, 1901); R. T. Ely, French and German Socialism in Modern Times (New York, 1883); P. Louis, Histoire du socialisme français (Paris, 1901); E. Villey, Les périls de la démocratie française (Paris, 1910); and A. Fouillee, La démocratie politique et sociale en France (Paris, 1910).

# CHAPTER XVIII

## JUSTICE AND LOCAL GOVERNMENT

### I. French Law

The law of France is of highly composite origin. Its sources lie far back in the Roman law, the canon law, and the Germanic law of the Middle Ages. As late as 1789 there had been no attempt at a complete codification of it. Under the operation of a succession of royal ordinances, criminal law, civil and criminal procedure, and commercial law, it is true, had been reduced by the opening of the Revolution to a reasonable measure of uniformity. The civil law existed still, however, in the form of "customs" (*coutumiers*), which varied widely from province to province. A code of civil law which should be established uniformly throughout the realm was very generally demanded in the cahiers of 1789, and such a code was specifically promised in the constitution of 1791

**364. The Code Napoléon.**—Toward the work of codification some beginnings were made by the first two Revolutionary assemblies, but the development of a coherent plan began only with the Convention.[1] In the period of the Consulate the task was continued and progress was rapid. The governmental mechanism under the constitution of 1799 was cumbersome enough, but it was not ill adapted to the prosecution of a project of this particular character. To a special commission, appointed by the First Consul, was intrusted the drafting of the codes, and the ultimate decision of difficult or controverted questions fell to the Council of State, over whose deliberations Napoleon not infrequently presided in person. March 31, 1804,—less than two months before the proclamation of the Empire,—the new *Code civil des Français* was promulgated in its entirety. September 3, 1807, the instrument was given officially the name of the *Code Napoléon*. By a measure of 1818 the original designation was restored; but a decree of March 27, 1852, revived the Napoleonic nomenclature. Since September 4, 1870, the instrument has been cited officially simply as the *Code Civil*. In arrangement the Code resembles the Institutes of

[1] H. Cauvière, L'idée de codification en France avant la rédaction du Code Civil (Paris, 1911).

Justinian. In content it represents a very successful combination of the two great elements with which the framers had to deal, i. e., the ancient heterogeneous law of the French provinces and the law which was originated, or which was given shape, during the course of the Revolution.

With the progress of time certain defects have appeared in the Code, and since 1871 more than a hundred modifications, some important and some otherwise, have been introduced in it. Upon the occasion of the celebration, in 1904, of the centenary of its promulgation there was created an extra-parliamentary commission charged with the task of preparing a revision of the instrument.[1] In the main, the faults to be corrected are those which have arisen inevitably from the growth of new interests and the development of new conditions since 1804, in respect, for example, to insurance and to labor. In Belgium the Code Napoléon survives to this day, and the codes of Italy, Spain, Portugal, Holland, and many of the Latin American states are modelled upon it.

**365. Other Codes.**—Aside from the Civil Code of 1804, containing an aggregate of 2,281 articles, the larger part of the law of France today is comprised in four great codes, all drawn up and promulgated during the era of the Consulate and the Empire. These are: (1) the Code of Civil Procedure, of 1,042 articles, in 1806; (2) the Code of Commerce, of 648 articles, in 1807; (3) the Code of Criminal Instruction, of 648 articles, in 1808; and (4) the Penal Code, of 484 articles, in 1810.[2] The last two codes were submitted to a general revision in 1832, and various supplementary codes,—e. g., the Forest Code, of 226 articles, in 1827,—have been promulgated. But the modifications introduced since Napoleon's day have involved principally mere details or the addition of subjects originally omitted. No one of the codes represented at the time of its promulgation a new body of law. On the contrary, all of them, and especially the fundamental Civil Code of 1804, merely reduced existing law to systematic, written form, introducing order and uniformity where previously there had been diversity and even chaos. By the process the law of France was given a measure of unity and precision which it had never before possessed, with the disadvantage, however, that it lost the flexibility and dynamic character that once had belonged to it. Throughout the past hundred years the whole of France has been a country of one written law—a

[1] The task of revision has not yet been accomplished. See La Code Civil, livre du centenaire (Paris, 1904)—a volume of valuable essays by French and foreign lawyers.

[2] M. Leroy, Le centenaire du code pénal, in *Revue de Paris*, Feb. 1, 1911.

law so comprehensive in both principles and details that, until comparatively recently, there has seemed to be small room or reason for its modification. The history of French parliamentary assemblies has been affected perceptibly by the narrowing of the field of legislation arising from this circumstance.[1]

## II. The Courts

**366. The Ordinary Courts: Justice of the Peace.**—In French practice the distinction which is drawn between private law and public law is so sharp that there have been built up two hierarchies of courts—the ordinary and the administrative—each of which maintains practically exclusive jurisdiction within an independent field. The ordinary courts comprise civil and criminal tribunals, together with certain special tribunals, such as the *tribunaux de commerce*. At the bottom stands the court of the justice of the peace (*juge de paix*) of the canton. This tribunal was created by the first of the Revolutionary assemblies and it has existed continuously to the present day. The justice of the peace takes cognizance of disputes where the amount involved does not exceed 600 francs, and of contraventions of law punishable by a fine not exceeding fifteen francs or imprisonment not beyond five days. In civil cases involving more than 300 francs, and in criminal cases involving imprisonment or a fine exceeding five francs, appeal lies to a higher tribunal.

**367. The Courts of First Instance.**—Next above the court of the justice of the peace stands the *tribunal de première instance*, or *tribunal d'arrondissement*. Of such courts there is, with a few exceptions, one in each arrondissement or district. Each consists of a president, at least one vice-president, and a variable number of judges, three of whom form a court with full powers. To each is attached a *procureur*, or public prosecutor. This tribunal takes cognizance of all kinds of civil cases. In appeals from the justices of the peace, actions relating to personal property to the value of 1500 francs, actions relating to land to the value of sixty francs per year, and all cases of registration, there lies no appeal from its decisions. The jurisdiction of the court in penal cases extends to all offenses of the class known as *délits* (misdemeanors), i. e., offenses involving penalities which are heavier than those attached to the contraventions dealt with by the justices of the peace, yet less serious than those prescribed for crimes. When sitting as a criminal court,

[1] J. Brissaud, History of French Private Law, trans. by R. Howell (Boston, 1912).

the court of first instance is known as a *tribunal correctionnel*, or "correctional court." All of its judgments in criminal cases are subject to appeal.

**368. The Courts of Appeal and of Assize.**—Above the courts of first instance are twenty-six *cours d'appel*, or courts of appeal, each of which exercises jurisdiction within a territory comprising from one to five departments. At the head of each is a president, and each maintains an elaborate *parquet*, or permanent staff of officials, in which are included several *procureurs-généraux* and *avocats-généraux*. For the transaction of business the court of appeal is divided into chambers, or sections, each consisting of a president and four *conseillers*, or judges. The primary function of the court is the hearing of appeals, in both civil and criminal causes, from the courts of first instance. Original jurisdiction is limited and incidental.

Closely related to the courts of appeal are the *cours d'assises*, or courts of assize. These are not separate or permanent tribunals. Every three months there is constituted in each department, ordinarily in the chief town thereof, a court of assize consisting of a specially designated member of the court of appeals within whose jurisdiction the department lies and two other magistrates, who may be chosen either from the remaining *conseillers* of the court of appeals or from the justices of the local court of first instance. The courts of assize are occupied exclusively with serious offenses, such as in the Penal Code are classified as crimes. In them, and in them only among French tribunals, is the device of the jury regularly employed. A jury consists of twelve men, whose verdict is rendered by simple majority. As in Great Britain and some of the American states, the jurors determine the fact but do not apply the law.

**369. The Court of Cassation.**—At the apex of the hierarchy of ordinary tribunals is the Court of Cassation. This court sits at Paris, and in all matters of ordinary private law it is the supreme tribunal of the state. It consists of a first president, three sectional presidents, and forty-five judges. Attached to it are a procurator-general and six advocates-general. For working purposes it is divided into three sections: the *Chambre des Requêtes*, or Court of Petitions, which gives civil cases a preliminary hearing; the Civil Court, which gives them a final consideration; and the Criminal Court, which disposes of criminal cases on appeal. It is within the competence of the Court of Cassation to review the decisions of any tribunal in France, save those of an administrative character. It passes, not upon fact, but upon the principles of law involved and upon the competence of the court rendering the original decision. A decision which is overruled

is said to be *cassé*, i. e., annulled. The purpose of the Court of Cassation is not alone to further the interests of justice, but also to preserve the unity of French jurisprudence.

**370. Appointment and Tenure of Judges.**— All judges attached to the ordinary tribunals are appointed by the President of the Republic, on the recommendation, and under the responsibility, of the Minister of Justice. With the exception of justices of the peace in France, and of judges of all grades in Algeria and the colonies, tenure of judicial office continues during good behavior; and, outside of the classes mentioned, no judicial officer may be dismissed without the consent of the Court of Cassation. There is, however, an age limit, varying with the official grade, at which retirement is expected and virtually required. Justices of the peace and Algerian and colonial judges may be dismissed by the President. Salaries range from 1,600 francs per year in the case of the justice of the peace to 30,000 in that of the President of the Court of Cassation.[1]

**371. Administrative Law and Administrative Tribunals.**—Actions at law arising out of the conduct of administration are brought, not in the regular courts connected with the Ministry of Justice, but in special administrative tribunals connected with the Ministry of the Interior. Administrative courts exist for the application of administrative law, and administrative law may be defined in brief as that body of legal principles by which are determined the status and liabilities of public officials, the rights and liabilities of private individuals in their dealings with the official representatives of the state, and the procedure by which these rights and liabilities may be enforced. The idea underlying it is that the government, and every agent of the government, possesses a body of rights, privileges, and prerogatives which are sharply marked off from those of the private citizen, and that the nature and extent of these rights and privileges are to be determined on principles essentially distinct from those which govern in the fixing of the rights and privileges of citizens in relation one to another. This conception is foreign to the English-speaking world, and neither Great Britain nor any nation of English origin possesses more than here and there an accidental trace of administrative law. Among continental European states, however, the maintenance of a body of administrative legal principles—un-

[1] The best treatise upon the French judicial system and upon proposed reforms of it is J. Coumoul, Traité du pouvoir judiciaire; de son rôle constitutionnel et de sa réforme organique (2d ed., Paris, 1911). See Vicomte d'Avenel, La réforme administrative—la justice, in *Revue des Deux Mondes*, June 1, 1889; L. Irwell, The Judicial System of France, *Green Bag*, Nov.. 1002.

codified and flexible, but fundamental—is all but universal. In some states, as Belgium, the rules of administrative law are interpreted and enforced by the ordinary courts; but in others, as in France, they are dealt with by an entirely separate hierarchy of tribunals, made up of officials in the service of the government and dismissable at any time by the head of the state. "In France," as one writer puts it, "there is one law for the citizen and another for the public official, and thus the executive is really independent of the judiciary, for the government has always a free hand, and can violate the law if it wants to do so without having anything to fear from the ordinary courts."[1] Although not without precedent in the Old Régime, the distinction between ordinary and administrative law in France was first clearly established by Napoleon in the constitution of 1799, and the system of administrative courts erected under that instrument has survived in large part to the present day.[2]

**372. The Council of State.**—The most important of the administrative tribunals is the *Conseil d'État*, or Council of State, a body which once possessed large functions of an executive and legislative character, but whose influence to-day arises almost exclusively from its supreme administrative jurisdiction. The Council of State is composed of 32 councillors *en service ordinaire*, 19 councillors *en service extraordinaire* (Government officials deputed to guard the interests of the various executive departments), 32 *maitres des requêtes*, and 40 auditors. All members are appointed by, and dismissable by, the President. For purposes of business the body is divided into four sections, each corresponding to a group of two or three ministerial departments, and a fifth section which deals more directly with questions of administrative law. It is the function of the Council to consider and make reply to all questions relating to administrative affairs which the Government may lay before it; and in all administrative cases at law it is the court of last resort. Below it stands, in each department, a *conseil de prefecture*, or prefectural council, which is the court of first instance in all litigation arising out of the application of administrative law. A specialized function of the prefectural council is the determining of the validity of arrondissement and municipal elections.[3]

[1] Lowell, Governments and Parties, I., 58.

[2] It need hardly be explained that the First Consul's intention was that the ordinary judges should not be allowed to obstruct by their decisions the policies of the government.

[3] For an account of the administrative law of France see A. V. Dicey, The Law of the Constitution (7th ed., London, 1908), Chap. 12. Important French works on the subject include H. Barthélemy, Traité elementaire de droit administratif (5th ed., Paris, 1908); H. Chardon, L'administration de la France, les fonction-

**373. Other Courts.**—Between the hierarchy of ordinary courts and that of administrative tribunals stand a variety of courts of special character—courts of commerce, courts of accounts, courts of public instruction. There is a *Tribunal des Conflits*, or Court of Conflicts, composed of the Minister of Justice, three members of the Court of Cassation, three of the Council of State, and two elected by these seven. Under the presidency of the Minister of Justice, it determines, in the event of doubt or dispute, the competent jurisdiction, ordinary or administrative, to be extended to a particular case. Finally the fact may be recalled that to take cognizance of attacks upon the safety of the state, as well as for the trial of an impeachment proceeding, the Senate may be constituted a high court of justice.

## III. Local Government: Development since 1789

**374. Stability of Local Institutions.**—Students of political science are familiar with the fact that governmental systems are, as a rule, less stable at the top than at the bottom. Local institutions, embedded in the interests of the community and supported by the native conservatism of the ordinary man, strike root deeply; the central, national agencies of law-making and of administration are played upon by larger, more unsettling forces, with the consequence of greatly increased likelihood of change. Of this principle the history of modern France affords notable illustration. Throughout a century of the most remarkable instability in the organization of the central government of the nation the scheme of local government which operates at the present day has been preserved almost intact. The origins of it, it is true, are to be traced to revolution. In most of its essentials it was created by the National Assembly of 1789 and by Napoleon, and it rose upon the wreckage of a system whose operation had been extended through many centuries of Capetian and Bourbon rule. Once established, however, it proved sufficiently workable to be perpetuated under every one of the governmental régimes which, between 1800 and the present day, have filled their successive places in the history of the nation.

**375. Local Government Under the Old Régime.**—Prior to the Revolution the French administrative system was centralized and bureaucratic, but heterogeneous and notoriously ineffective. The provinces had

naires Paris, 1908); G. Jèze, Les principes généraux du droit administratif (Paris, 1904); and J. L. Aucoc, Conférences sur l'administration et le droit administratif (3d ed., Paris, 1885). Mention may be made also of E. J. Laferrière, Traité de la juridiction administrative et des recours contentieux (Paris, 1887–1888), and Varagnac, Le Conseil d'État et les projets de réforme, in *Revue des Deux Mondes*, Aug. 15, and Sept. 15, 1892.

ceased almost completely to be political units. In but few of them did the ancient assembly of the estates survive, and nowhere did it possess more than merely formal administrative powers. The "governments" of later times, corresponding roughly to the provinces, had fallen likewise into desuetude and the governors had become inactive pensioners. Of political units possessing some vitality there were but two—the *généralité* and the commune. The *généralité* was the jurisdiction of a royal officer known as an *intendant*, to whom was assigned the conduct of every kind of administrative business. The number of *généralités* in the kingdom varied from thirty to forty. The commune was an irreducible local unit whose history was unbroken from the era of Roman dominion in Gaul. Its constitution in the eighteenth century was in appearance democratic. To the communal assembly belonged all persons who were liable to the *taille*, and this body elected communal officers, cared for communal property, and regulated local affairs. In point of fact, however, the measure of real independence which the assembly enjoyed was meager. The *intendant* dictated or controlled virtually its every act. Of true local government it may be said that in pre-revolutionary France there was little or none.[1]

**376. The Reconstitution of 1789–1791.**—One of the earlier performances of the National Assembly of 1789 was to sweep away relentlessly the administrative system of the Old Régime and to substitute therefor an order which was all but entirely new. The communes, to the number of upwards of forty-four thousand, were retained. But the provinces and the *généralités* were abolished and in their places was erected a system of departments, districts, and cantons. For historic boundary lines, physical demarcations, and social cleavages only incidental allowance was made. Eighty-three departments in all were created. In each there were, on an average, six or seven districts, and in each of these an average of eight or nine cantons. The cantons, in turn, were made up of widely varying numbers of communes. The most striking aspects of the system were its symmetry and its detachment from history and tradition. Departments, districts, and cantons presented, and were intended to present, a *tabula rasa* upon which the law-makers of France might impress any pattern whatsoever.

For the time being the ideal of democracy was predominant, and by the measures of 1789, re-enforced by the constitution of 1791, the entire administration of local affairs was transferred at a stroke from the agents of the crown to the elected representatives of the new governmental

[1] A. Babeau, La ville sous l'ancien régime (Paris, 1880); A. Luchaire, Les communes françaises (Paris, 1890); H. Barthélemy, Traité de droit administratif (5th ed., Paris, 1908); A. Esmein, Histoire du droit français (8th ed., Paris, 1908).

units. In the department was established an administrative group consisting of thirty-six persons, elected for a term of two years, and divided into an executive directory of nine and a deliberative council of twenty-seven. In the district was established a similar, but smaller, elective directory and council, and in the commune provision was made for the election, under a broadly democratic franchise, of a mayor and a council. The canton was not employed for administrative purposes.[1]

**377. The Revival of Centralization, 1795–1800.**—Experience proved that in the direction both of democracy and of decentralization the reformers had gone too far. With the re-establishment of order following the close of the Revolution proper, in 1795, there was revived the rule of official experts, together with the maintenance over the local administrative organs of a highly centralized supervision. The Constitution of the Year III. (1795), while perpetuating the elective principle in respect to local officers, replaced the commune by the canton as the basal administrative unit and made provision in a variety of ways for the effective control of local affairs by the national Directory.[2] Under the Napoleonic régime, established in 1799–1800, the centralizing process was carried yet further. The canton was reduced to the status of a judicial district and the commune was restored as the basal administrative unit;[3] but it was stipulated that the mayor, the *adjoints*, or deputies, and the council of the commune should be no longer elective, but should be appointed by the central government, directly or by its departmental agents. By law of February 17, 1800, there was established in each department a prefect, appointed by the First Consul, responsible only to him, and endowed with functions scarcely less comprehensive than, in the days of the Old Régime, had been those exercised by the *intendant*. The general council of the department was perpetuated, but its sixteen to twenty-four members were henceforth to be named for a term of three years by the First Consul. Each department, furthermore, was divided for administrative purposes into *arrondissements*, within each of which were established a sub-prefect and a council of eleven members, likewise appointive. The arrondissement represented substantially a revival of the district, established by law of December 22, 1789, and extinguished by the constitution of 1795. The sub-prefect served as a local deputy of the prefect, and one

[1] For the text of the Décret sur les Municipalités of December 14, 1789, see Hélie, Constitutions, 59–72. An English version is in Anderson, Constitutions, 24–33.

[2] Anderson, Constitutions, 233–236. The canton, suppressed by law of June 26, 1793, was now revived.

[3] The number of communes was reduced at this time from 44,000 to 36,000.

of his principal duties was to assist in the continuous and close supervision of the affairs of the communes within his jurisdiction.[1]

**378. From Napoleon to the Third Republic.**—The Napoleonic administrative system—simple, symmetrical, bureaucratic, and absolutely centralized—has persisted in France, in a large measure, to the present day.[2] The most important modifications that have been introduced in it are those which have arisen from a cautious revival of the elective principle in the constitution of the various local governmental bodies. The fall of Napoleon brought no change of consequence, and none ensued until after the revolution of 1830. In the days of the Orleanist monarchy, however, the rigor of the Napoleonic system was in some measure relaxed. A law of 1831 made the municipal council elective, one of 1833 did the same thing for the councils of the department and the arrondissement, and both measures established a fairly liberal arrangement in respect to the local franchise. In 1838 the powers of the two councils were materially increased.[3]

At the establishment, in 1848, of the Second Republic, the essentials of the administrative system then prevailing were retained. It was enacted merely that the various councils should be elected on a basis of manhood suffrage, and that in communes of fewer than six thousand inhabitants the council should be permitted to elect the mayor and the deputies, while in the larger ones appointment should be made as heretofore by the central authorities. With the conversion, in 1851-52, of the Second Republic into the Second Empire, this decentralizing tendency suffered a distinct check. Throughout the reign of Napoleon III. the communal council continued to be elected, at least nominally, upon the principle of manhood suffrage; but so throughgoing was the prefectorial supervision that there remained to the councils very little of initiative or independence of action. Even the privilege which the smaller communes possessed of choosing their own mayors was speedily lost, while by a decree of March 25, 1852, the powers of the prefect in

[1] Anderson, Constitutions, 283–288. G. Alix, Les origines du système administratif français, in *Annales des Sciences Politiques*, July–Nov., 1899.

[2] Its influence upon the administrative systems of other countries—Belgium, Italy, Spain, and even Greece, Japan, and various Latin American states—has been profound. "Judged by its qualities of permanence and by its influence abroad, the law of 1800 is one of the best examples of Bonaparte's creative statesmanship, taking rank with the Code and with the Concordat among his enduring non-military achievements. If, in the nineteenth century, England has been the mother of parliaments and has exercised a dominant influence upon the evolution of national governments, France has had an equally important rôle in moulding systems of local administration among the nations." Munro, Government of European Cities, 7.

[3] The texts of these acts are in Hélie, Constitutions, 1019–1050.

communal affairs were substantially extended. Many matters pertaining to departmental and communal interests which this official had been accustomed to refer to the authorities at Paris he was now authorized to dispose of at his own discretion. Throughout the Second Empire the prefect, more truly than ever before, was the pivot of the administrative system. Despite the survival of elective councils in the departments, the arrondissements, and the communes, local autonomy all but disappeared.

**379. Changes Under the Third Republic.**—Upon the establishment of the Third Republic the Napoleonic system was discontinued in only some of its more arbitrary aspects. The National Assembly of 1871 revived tentatively the scheme laid down in the constitution of 1848, save that once again the councils of smaller communes were authorized to elect the mayors and deputies. Even at such a time of unsettlement, when the liberal elements were insistent upon changes that were fundamental, there was slender indication of any real desire on the part of the French people for an essentially decentralized administrative régime. At the most, the demand was but for the autonomy of the commune, while the canton, arrondissement, and department should continue to be administered by, and largely in the interest of, the national government. By law of March 28, 1882, the demand in behalf of the communes was met. Upon every commune, large and small (except Paris), was conferred the privilege of choosing freely its entire quota of administrative officials; and in the great municipal code of April 5, 1884, drafted by a commission of nine constituted in the previous year, this privilege, with others, was specifically guaranteed.[1] Departments and arrondissements, however, continued to be primarily spheres within which the general government, acting through its own agents, brought home immediately to the people the reality and comprehensiveness of its authority. And to this day France presents the curious spectacle of a nation broadly democratic in respect to its constitution and central government, yet more closely bound by a hard and fast administrative régime than any other principal state of western Europe.[2]

[1] Text in J. Duvergier, Collection complète des lois, décrets, ordonnances, réglements, avis du conseil d'état (Paris, 1834–1907), LXXXIV., 99–148.

[2] On the French administrative system two admirable general works are H. Barthélemy, Traité de droit administratif (5th ed., Paris, 1908), and A. Esmein, Histoire du droit français (8th ed., Paris, 1908). An older treatise of value is E. Monnet, Histoire de l'administration provinciale, départementale et communale en France (Paris, 1885). Three works in which the subject is dealt with in a comparative fashion are P. P. Leroy-Beaulieu, Administration locale en France et en Angleterre (Paris, 1872); P. W. L. Ashley, Local and Central Government (London, 1906); and F. J. Goodnow, Comparative Administrative Law (2d ed., New York,

## IV. Local Government To-day

**380. The Department: the Prefect.**—For administrative purposes, the Republic is divided, first of all, into 86 departments, besides which there is the "territory" of Belfort, a remnant of the department of the Upper Rhine, most of which was acquired by Germany in 1871. Since 1881 the three departments of Algeria have been dealt with substantially as if included within continental France.

At the head of each of the departments is a prefect, appointed and removed nominally by the President of the Republic, but in reality by the Minister of the Interior. The prefect, who is much the most important of all local officials, is at the same time an agent of the general government and the executive head of the department in the administration of local affairs. As agent of the general government he acts, in some instances, upon detailed instructions; in others, he enjoys a wide range of discretion. His powers extend to virtually all public matters affecting the department. He supervises the execution of the laws; maintains a vigorous control over all administrative officials of the department, upon occasion annulling their acts; gives the authorities at Paris information and advice respecting the affairs of the department; nominates to a variety of subordinate offices; exercises an oversight of the communes, some of whose measures become effective only after receiving his assent; and, in certain instances indicated by law, acts as a judge. He is assisted by a secretary and a *conseil de prefecture*, appointed by the President. This prefectorial council, consisting of from three to nine members, advises the prefect and, in certain cases, exercises jurisdiction as an administrative tribunal. The prefect is essentially a political official. He owes his appointment not infrequently to political considerations, and with the fall of the ministry his tenure is apt to be terminated.

**381. The Department: the General Council.**—As executive head of the department the prefect is required to work with a *conseil général*, or representative assembly, elected by the inhabitants of the department on a basis of manhood suffrage. This council comprises one member chosen in each canton for a period of six years, half of the number retiring every three years. The actual powers of the body are not large. Aside from the apportioning of the direct taxes among the arrondissements, they are restricted pretty generally to the administration of highways, canals, schools, asylums, and similar interests.

1903). A study of some value is J. T. Young, Administrative Centralization and Decentralization in France, in *Annals of Amer. Acad. of Political and Social Science*, Jan., 1898.

Questions of a political nature or of a national bearing are rigorously excluded from consideration. The council has but two ordinary sessions a year—one extending through not more than fifteen days, the other not more than a month. The longer begins regularly in August and is devoted to the consideration of the budget. During the intervals between sessions the council is represented by a *commission départementale*, or permanent delegation, of from four to seven members. Neither the council nor the delegation possesses any considerable measure of control over the prefect. The council's acts may be vetoed by the President of the Republic, and, except when the national parliament is in session, the body may be dissolved by the same power. The department is an essentially artificial political unit. During the century and a quarter of its existence it has not become—indeed has been prevented deliberately from becoming—a sphere of forceful, independent governmental activity.[1]

**382. The Arrondissement and the Canton.**—Next to the department stands the arrondissement, or district, created originally in 1799. Within the bounds of France there are to-day 362 of these districts. Except those in the department of the Seine, and three containing the capitals of departments elsewhere, each has in its chief town a subprefect, who serves as a district representative of the prefect. Every one has a *conseil d'arrondissement*, or arrondissement council, consisting of at least nine members, elected by manhood suffrage for a term of six years. But since the arrondissement has no corporate personality, no property, and no budget, the council possesses but a single function of importance, that, namely, of allotting among the communes their quotas of the taxes assigned to the arrondissement by

[1] An administrative reform which appears not infrequently in current political discussion in France is the grouping of the departments into "regions" possessing a certain community of character and interest. Each of a score or more of regions might conceivably be made to have an assembly of its own, and within each of them one of the departmental prefects might be given a certain superiority over his colleagues. The principal purpose would be to offset somewhat the nation's present excess of administrative centralization. On this proposal see C. Beauquier, Un projet de réforme administrative; l'organisation régionale en France, in *Revue Politique et Parlementaire*, Nov. 10, 1909. Cf. A. Brette, La réforme des départements à propos d'une proposition de loi, ibid. On the department as at present constituted the monumental treatise is G. Bouffet et L. Périer, Traité du département, 2 vols. (Paris, 1894–1895). In M. Laferrière, Loi organique départementale du 10 Août 1871 (Paris, 1871) is an annotated copy of the organic statute of 1871. See also G. Dethan, De l'organisation des conseils généraux (Paris, 1889); A. Nectoux, Des attributions des conseillers généraux (Paris, 1895); and P. Chardenet, Les élections départementales (Paris, 1895). An excellent brief statement will be found in M. Block, Dictionnaire de l'administration française (5th ed., Paris and Nancy, 1905), I., 933–948, 1101–1116.

the general council of the department. The arrondissement is, however, the electoral district for the Chamber of Deputies, and also normally the seat of a court of first instance.[1]

The canton is an electoral and a judicial, but not strictly an administrative, unit. It is the area from which are chosen the members of both the departmental general council and the council of the arrondissement, and it constitutes the jurisdiction of the justice of the peace. The total number of cantons is 2,911. As a rule each contains about a dozen communes, though a few of the larger communes are so populous as to be divided into a number of cantons.

**383. The Commune.**—The most fundamental of the administrative divisions of France, and the only one whose origins antedate the Revolution, is the commune. The commune is at the same time a territorial division and a corporate personality. "On the one hand," to employ the language of a recent writer, "it is a tract of territory the precise limits of which were defined by the law of December 22, 1789, or by some subsequent law or decree; for by the law of 1789 all local units which had a separate identity during the old régime were authoritatively recognized as communes, and since that enactment there have been a number of suppressions, divisions, consolidations, and creations of communal units. On the other hand, the commune is an agglomeration of citizens united by life in a common locality and having a common interest in the communal property. A commune ranks as a legal person: it may sue and be sued, may contract, acquire, or convey property,—it may, in general, exercise all of the ordinary rights of a corporation." [2]

Of communes there are, in all, under the territorial land survey of 1909, 36,229. In both size and population they vary enormously. Some comprise but diminutive hamlets of two or three score people; others comprise cities like Bordeaux, Lyons, and Marseilles, each with a population in excess of a quarter of a million. At the last census 27,000 communes had a population of less than one thousand; 17,000, of less than five hundred; 9,000, of less than three hundred; 137, of less than fifty. On the other hand, 250 contained each a population of more than ten thousand, and fourteen of more than one hundred thousand. In area they vary all the way from a few acres to the 254,540 acres of the commune of Arles.[3]

**384. The Communal Council.**—Except Paris and Lyons, all communes are organized and governed in the same manner. In each

[1] Block, Dictionnaire de l'administration française, I., 256–260.
[2] Munro, Government of European Cities, 15.
[3] A. Porche, La question des grandes et des petits communes (Paris, 1900).

is a council, whose members are elected by manhood suffrage and, normally, on the principle of the *scrutin de liste*, for a term of four years. The body is renewed integrally, on the first Sunday in May in every fourth year. In communes whose population is under five hundred the number of councillors is ten; in those whose population exceeds five hundred the number is graduated on a basis such that a commune of sixty thousand people has a council of thirty-six, which is the maximum. The council holds annually four ordinary sessions—in February, May, August, and November—besides which special meetings may be convoked at any time by the prefect, the sub-prefect, or the mayor. Sessions are held in the *mairie*, or municipal building, and are regularly open to the public. Except the May session, during which the budget is considered, a meeting may not be prolonged beyond fifteen days, save with the consent of the sub-prefect. The normal maximum of the May sitting is six weeks.

Speaking broadly, the functions of the council may be said to comprise the administration of the purely local affairs of the commune and the formulation and expression of local needs and demands. In the code of 1884 the powers of the body are defined with exceeding minuteness. Some are purely advisory, to be exercised when the council is called upon by the higher administrative authorities for an expression of local interest or desire in respect to a particular question. Advice thus tendered may or may not be heeded. Other powers involve the initiation by the council of certain kinds of measures, which, however, may be carried into effect only with the assent of the higher authorities. Among the thirteen such measures which are enumerated in the code the most important are those pertaining to the purchase, sale, or other legal disposition of property belonging to the commune. Finally, there is a group of powers—relating principally to the various communal services, e. g., parks, fire-protection, etc.—which are vested in the communal authorities (council and mayor) independently. But the predominating fact is that even to-day the autonomy of the commune is subject to numerous and important limitations. Many communal measures become valid only upon receiving the approval of the prefect, and virtually any one of them may be suspended or annulled by that official. Some require the consent of the departmental council, or even of the President of the Republic; and by decree of the President the council itself may be dissolved at any time.

**385. The Mayor and his Assistants.**—The executive head of the commune is the *maire*, or mayor, who is elected by the municipal council, by secret ballot, from its own membership, for a term of four years. Associated with the mayor is, in communes of 2,500 inhabitants

or fewer, an *adjoint*, or assistant, similarly chosen. In communes of 2,500 to 10,000 inhabitants there are two assistants, and in those of over 10,000 there is an additional one for every 25,000 people in excess of the figure named. Except in Lyons, however, where there are seventeen, the number may not exceed twelve. The mayor plays the dual rôle of executive head of the commune and representative (though not the appointee) of the central government. The powers which he exercises vary widely according to the size and importance of the commune. But in general it may be said that he appoints to the majority of municipal offices, publishes laws and decrees and issues *arrêtes*, or ordinances, supervises finance, organizes and controls the local police, executes measures for public health and safety, safeguards the property interests of the commune, and represents the commune in cases at law and on ceremonial occasions.

The functions of the mayoral office are in practice distributed by the mayor among the assistants, to each of whom is assigned a specific department, such as that of streets, of sanitation, or of fire-protection. As a rule, the mayor reserves to himself the control of police. For the acts of the assistants, however, the mayor is directly responsible, and all acts, whether of the mayor or of the assistants, which relate to the interests of the general government are performed under the strictest surveillance of the prefectorial authorities. The mayor may be suspended from office for a month by the prefect, or for three months by the Minister of the Interior; and he may be removed from office altogether by order of the President.

Despite the restrictions which are placed upon it, the commune remains the true focus of local life in France.[1] Its activities, on a suffi-

[1] Among general treatises on the French commune may be mentioned M. Block, Entretiens sur l'administration; la commune (Paris, 1884); L. Bequet, Traité de la commune (Paris, 1888); P. Andre and F. Marin, La loi sur l'organisation municipale du 5 avril 1884 (Paris, 1884); and F. Grelot, Loi du 5 avril 1884 (Paris, 1889). The best and most recent extensive work is L. Morgand, La loi municipale, 2 vols. (7th ed., Paris, 1907). The most convenient brief discussion in French is in Block, Dictionnaire de l'administration française, I., 738–852. In English a good description is in A. Shaw, Municipal Government in Continental Europe (New York, 1897), and a fuller and more recent one in W. B. Munro, The Government of European Cities, 1–108. On municipal elections the best work is M. J. Saint-Lager, Élections municipales (6th ed., Paris, 1904). Worthy of mention are Chardenet, Panhard, and Gérard, Les élections municipales (Paris, 1896), and J. Dorlhac, De l'électorat politique: étude sur la capacité électorale et les conditions d'exercise du droit de vote (Paris, 1890). An excellent study is P. Lavergne, Du pouvoir central et des conseils municipaux, in *Revue Générale d'Administration*, 1900. See also A. G. Desbats, Le budget municipal (Paris, 1895); M. Peletant, De l'organisation de la police (Dijon, 1899); and R. Griffin, Les biens communaux en France (Paris, 1899).

ciently petty scale though they not infrequently are, run the gamut of finance, commerce, industry, education, religion, and politics. So strong is the communal spirit that public sentiment will acquiesce but rarely in the suppression of a commune, or even in the union of two or more diminutive ones; and, in truth, the code of 1884 recognized the fixity of communal identity by permitting changes of communal boundaries to be undertaken by the departmental authorities only after there shall have been held an *enquête* and local susceptibilities shall have been duly consulted. Save by special decree of the President of the Republic, not even the name of a commune may be altered.

On the government of Paris the reader may be referred to G. Artigues, Le régime municipal de la ville de Paris (Paris, 1898), and M. Block, L'Administration de la ville de Paris et du département de la Seine (Paris, 1898). Excellent bibliographies are printed in Munro, *op. cit.*, 380–389, and in Block, Dictionnaire, I., 850–852.

# PART IV. ITALY

## CHAPTER XIX

### CONSTITUTIONAL DEVELOPMENT IN THE NINETEENTH CENTURY

#### I. The Era of Napoleon

**386. Italy in the Later Eighteenth Century.**—The dominant forces in the politics of Europe since the French Revolution have been the twin principles of nationality and democracy; and nowhere have the fruits of these principles been more strikingly in evidence than in the long disrupted and misgoverned peninsula of Italy. The awakening of the Italian people to a new consciousness of unity, strength, and aspiration may be said to date from the Napoleonic invasion of 1796, and the first phase of the *Risorgimento*, or "resurrection," may, therefore, be regarded as coincident with the era of French domination, i. e., 1796–1814. At the opening of this period two non-Italian dynasties shared the dominion of much the larger portion of Italy. To the Austrian Hapsburgs belonged the rich duchies of Milan (including Mantua) and Tuscany, together with a preponderating influence in Modena. To the Spanish Bourbons belonged the duchy of Parma and the important kingdom of Naples, including Sicily. Of independent states there were six—the kingdom of Sardinia (comprising Piedmont, the island of Sardinia, and, nominally, Savoy and Nice), where alone in all Italy there lingered some measure of native political vitality; the Papal States; the petty monarchies of Lucca and San Marino; and the two ancient republics of Venice and Genoa, long since shorn of their empires, their maritime power, and their economic and political importance. All but universally absolutism held sway, and in most of the states, especially those of the south, absolutism was synonymous with corruption and oppression.

**387. The Cisalpine Republic, 1797.**—During the two decades which comprehended the public career of Napoleon it was the part of the French to overturn completely the long existing political arrangement of Italy, to abolish altogether the dominion of Austria and to substitute therefor that of France, to plant in Italy a wholly new and revolutionizing set of political and legal institutions, and, quite un-

intentionally, to fan to a blaze a patriotic zeal which through generations had smouldered almost unobserved. The beginning of these transformations came directly in consequence of the brilliant Napoleonic incursion of 1796. One by one, upon the advance of the victorious French, were detached the princes who, under English and Austrian tutelage, had been allied hitherto against France. The king of Naples sought an armistice; the Pope made peace; at Arcole and Rivoli the Austrian power was shattered. October 16, 1796, there was proclaimed, with the approval of the conqueror, a Cispadane Republic, including Modena, Reggio, Ferrara, and Bologna; and March 27, 1797, there was promulgated for the new state a constitution which, after having been adopted by representatives of the four districts, had been ratified by a vote of the people. This constitution—the first in the history of modern Italy—was modelled immediately upon the French instrument of 1795. It provided for a legislative council of sixty members, with exclusive power to propose measures, another of thirty members, with power to approve or reject measures, and an executive directory of three, elected by the legislative bodies.

In Lombardy a similar movement produced similar results. Through the spring and early summer of 1797 four commissions, constituted by Napoleon, worked out a constitution which likewise reproduced all of the essential features of the French model, and, July 9, the Transpadane Republic was inaugurated, with brilliant ceremony, at Milan. Provision was made for a directory and for two legislative councils consisting of one hundred sixty and eighty members respectively; and the first directors, representatives, and other officials were named by Napoleon. At the urgent solicitation of the Cispadanes the two republics were united, July 15, and upon the combined commonwealth was bestowed the name of the Cisalpine Republic.[1] During the preceding May the venerable but helpless Venetian republic had been crushed, and when, in the treaty of Campo Formio, October 17, 1797, Austria was brought to the point of recognizing the new Cisalpine state, she was compensated in some degree by being awarded the larger part of the Venetian territories, including the city of Venice.[2]

**388. The Ligurian, Roman, and Parthenopæan Republics, 1797–1799.**—In the meantime, in June, 1797, the ancient republic of Genoa had undergone a remodelling. The ruling oligarchy, driven from power by Napoleon, gave place to a democracy of a moderate

[1] The Cisalpine constitution was amended September 1, 1798, when there was introduced in the republic the French system of administrative divisions.

[2] E. Bonnal de Ganges, La chute d'une république (Paris, 1885).

type, the legislative functions being intrusted to two popularly elected chambers, while the executive power was vested in a doge and twelve senators; and to the new commonwealth, French in all but name, was given the designation of the Ligurian Republic. The Ligurian constitution was accepted by the people December 2, 1797. During the winter of 1797–1798 the French Directory, openly hostile to the papacy, persistently encouraged the democratic party at Rome to overthrow the temporal power and to set up an independent republic. February 15, 1798, with the aid of French arms, the democrats secured the upper hand, assembled in the Forum, declared for the restoration of the Roman Republic, and elected as head of the state a body of seven consuls. The aged pontiff, Pius VI., was maltreated and eventually transported to France. For the new Tiberine, or Roman, Republic was promulgated, March 20, 1798, a constitution providing for the customary two councils—a Senate of thirty members and a Tribunate of sixty—and a directory, christened a consulate, consisting of five consuls elected by the councils. Within a twelvemonth thereafter (January 23, 1799), following a clash of arms between the French and the Neapolitan sovereign, Ferdinand IV., Naples was taken and the southern kingdom was converted into the Parthenopæan Republic. A constitution was there promulgated providing for a directory of five members, a Senate of fifty, possessing exclusive right of legislative initiative, and a Tribunate of one hundred twenty.[1]

**389. Constitutional Revisions.**—During the absence of Napoleon on the Egyptian expedition the armies of France suffered repeated reverses in Italy, and by the end of 1799 all that had been gained for France seemed to be, or about to be, lost. By the campaign which culminated at Marengo (June 14, 1800), however, Napoleon not only clinched his newly won position in France but brought Italy once more to his feet. Under the terms of the treaty of Lunéville (February 9, 1801) Austria recognized the reconstituted Cisalpine and Ligurian republics, while Modena and Tuscany reverted to French control, and French ascendancy elsewhere was securely established. September 21, 1802, Piedmont was organized in six departments and incorporated in the French Republic. During the winter of 1802–1803 the constitutions of the Cisalpine and Ligurian republics were remodelled in the interest of that same autocratic domination which already was fast ripening in France. In each republic were established at first three bodies—an executive *consulta*,[2] a legislature of 150 members, and a court—which

[1] For an interesting portrayal of the workings of republican idealism in the Neapolitan republic see Fisher, Republican Tradition in Europe, 150-157.

[2] An advisory council of state, consisting of eight members.

were chosen by three electoral colleges comprising (1) the *possidenti*, or landed proprietors, (2) the *dotti*, or scholars and ecclesiastics, and (3) the *commercianti*, or merchants and traders; but the legislature could be overridden completely by the *consulta*, and the *consulta* was little more than the organ of Napoleon. Incidentally, the Cisalpine Republic at this point was renamed the Italian Republic. Within a twelvemonth the new constitutions, proving too democratic, were revised in such a manner that for the legislative body was substituted a senate of thirty members presided over by a doge, in which were concentrated all political and administrative powers.

**390. The Kingdom of Italy (1805) and the Napoleonic Kingdom of Naples, 1807.**—The stipulation of the treaty of Lunéville to the effect that the Italian republics should remain entirely independent of France was all the while disregarded. Politically and commercially they were but dependencies, and, following the proclamation of the French empire (May 18, 1804), the fact was admitted openly. To Napoleon it seemed incongruous that an emperor of the French should be a patron of republics. How meager was the conqueror's concern for the political liberty of the Italians had been demonstrated many times, never more forcefully than in the cynical treatment which he accorded Venice. No one knew better, furthermore, how ill-equipped were the Italians for self-government. Gradually, therefore, there was framed a project for the conversion of the Italian Republic into a kingdom which should be tributary to France. Napoleon's desire was that his eldest brother, Joseph, should occupy the throne of this kingdom. But Joseph, not caring to jeopardize his chances of succession in France, demurred, as did also the younger brother, Louis. The upshot was that by a constitutional statute of March 17, 1805, the Emperor caused himself to be called to the throne of Italy, and May 26 following, in the cathedral at Milan, he placed upon his own head the iron crown of the old Lombard kings. The sovereign's step-son, Eugene Beauharnais, was designated regent. In June of the same year, in response to a petition which Napoleon himself had instigated, the Ligurian Republic was proclaimed an integral part of the French empire. The annexation of Parma and Piacenza promptly followed.

Against the coalition of Great Britain, Russia, Austria, and Naples, which was prompted immediately by the Ligurian annexation, Napoleon was completely successful. By the treaty of Pressburg (December 26, 1806) Austria ceded to the Italian kingdom her portion of Venetia, together with the provinces of Istria and Dalmatia.[1] Following a vigorous campaign conducted by Joseph Bonaparte, the restored Bour-

[1] The incorporation of Dalmatia with the kingdom of Italy was but temporary.

bon family was driven again from Naples, whereupon Joseph allowed himself to be established there as king. In 1808 he was succeeded by Napoleon's ambitious marshal and brother-in-law Murat. From Bayonne, Joseph issued a constitution for his former subjects, providing for a council of state of from twenty-six to thirty-six members and a single legislative chamber of one hundred members, of whom eighty were to be named by the king and twenty were to be chosen by electoral colleges. Not until 1815, however, and then but during the space of a few weeks, was this instrument actually in operation.

**391. The End of French Dominance.**—Finally, there were brought under complete control the papal territories. Following prolonged friction with the Pope, Napoleon first of all (April 2, 1808) annexed to the kingdom of Italy the papal march of Ancona and the duchies of Urbino, Macerata, and Camerina, and then (by decrees of May 17, 1809, and February 17, 1810) added to the French empire Rome itself and the *Patrimonium Petri*. The Roman territory was divided into two departments, and in them, as in all of the Italian provinces which fell under Napoleon's rule, a thoroughgoing French system of law and administration was established. To all of the tributary districts alike were extended the Code Napoléon, and in them were organized councils, courts, and agencies of control essentially analogous to those which comprised the Napoleonic governmental régime in France. In them, likewise, were undertaken public works, measures for public education, and social reforms similar to those which in France constituted the most permanent and the most beneficent aspects of the Napoleonic domination. For the first time since the age of Justinian the entire peninsula was brought under what was in fact, if not in name, a single political system.

If the rise of French power in Italy had been brilliant, however, the collapse of that power was speedy and complete. It followed hard upon Napoleon's Russian campaign and the defeat at Leipzig. The final surrender, consequent upon Napoleon's first abdication was made April 16, 1814, by the viceroy Beauharnais, whereupon the Austrians resumed possession in the north, the Bourbons in the south, and the whole problem of permanent adjustment was given over to the congress of the powers at Vienna.[1]

[1] For brief accounts of the Napoleonic régime in Italy see Cambridge Modern History, IX., Chap. 14; B. King, A History of Italian Unity (London, 1899), I., Chap. 1. Works of value dealing with the subject include P. Gaffarel, Bonaparte et les républiques italiennes, 1796–1799 (Paris, 1895); A. Dufourcq, Le régime jacobin en Italie, 1796–1799 (Paris, 1900); F. Lemmi, Le origini del risorgimento italiano (Milan, 1906); G. Sabini, I primi esperimenti costituzionali in Italia, 1797–

## II. The Restoration and the Revolution of 1848

**392. Italy in 1815.**—By the Final Act of the Congress of Vienna, June 9, 1815, Italy was remanded to a status such that the name of the peninsula could be characterized with aptness by Metternich as merely a geographical expression. In essentials, though not in all respects, there was a return to the situation of pre-Napoleonic times. When the bargainings of the diplomats were concluded it was found that there remained, in all, ten Italian states, as follows: the kingdom of Sardinia, Lombardo-Venetia, Parma, Modena, Lucca, Tuscany, Monaco, San Marino, the kingdom of Naples, and the States of the Church. To the kingdom of Sardinia, reconstituted under Victor Emmanuel I., France retroceded Nice and Savoy, and to it was added the former republic of Genoa. Lombardo-Venetia, comprising the duchy of Milan and all of the continental possessions of the former Venetian republic, including Istria and Dalmatia, was given into the possession of Austria.[1] Tuscany was restored to the grand-duke Ferdinand III. of Hapsburg-Lorraine; the duchy of Modena, to Francis IV., son of the archduke Ferdinand of Austria; Parma and Piacenza were assigned to Maria Louisa, daughter of the Austrian emperor and wife of Napoleon; the duchy of Lucca, to Maria Louisa of Bourbon-Parma. In the south, Ferdinand IV. of Naples, restored to all of his former possessions, was recognized under the new title of Ferdinand I. And, finally, Pope Pius VII., long held semi-prisoner by Napoleon at Fontainebleau, recovered the whole of the dominion which formerly had belonged to the Holy See.

Respecting the entire arrangement two facts are obvious. The first is that there was not, in the Italy of 1815, the semblance, even, of national unity. The second is that the preponderance of Austria was scarcely less thoroughgoing than in Napoleon's time had been that of the French. Lombardo-Venetia Austria possessed outright; Tuscany, Modena, and Parma were ruled by Austrian princes; Ferdinand of Naples was an Austrian ally, and he had pledged himself not to introduce in his possessions principles of government incompatible with those employed by the Austrians in the north; while even Victor Emmanuel of Sardinia—the only important native sovereign, aside from the Pope, in the peninsula—was pledged to a perpetual Austrian alliance.[2]

1815 (Turin, 1911); and R. M. Johnston, The Napoleonic Empire in Southern Italy, 2 vols. (London, 1904). An older work is E. Ramondini, L'Italia durante la dominazione francese (Naples, 1882).

[1] By decree of April 24, 1815, these territories were erected into a kingdom under Austrian control, though possessing a separate administration.

[2] W. R. Thayer, The Dawn of Italian Independence, 2 vols. (Boston, 1893), I., 116–178.

**393. Foreshadowings of Unity.**—"Italy," wrote Napoleon some time after his banishment to St. Helena, "isolated between her natural limits, is destined to form a great and powerful nation. Italy *is* one nation; unity of language, customs, and literature, must, within a period more or less distant, unite her inhabitants under one sole government. And, without the slightest doubt, Rome will be chosen by the Italians as their capital." [1] At the time when this prophecy was written the unification of Italy appeared, upon the surface, the most improbable of events. It was, none the less, impending, and to it Napoleon must be adjudged to have contributed in no unimportant measure. In the words of a recent writer, "the brutalities of Austria's white coats in the north, the unintelligent repression then characteristic of the house of Savoy, the petty spite of the duke of Modena, the mediæval obscurantism of pope and cardinals in the middle of the peninsula, and the clownish excesses of Ferdinand in the south, could not blot out from the minds of the Italians the recollection of the benefits derived from the just laws, vigorous administration, and enlightened aims of the great emperor. The hard but salutary training which they had undergone at his hands had taught them that they were the equals of the northern races both in the council chamber and on the field of battle. It had further revealed to them that truth, which once grasped can never be forgotten, that, despite differences of climate, character, and speech, they were in all essentials a nation." [2] It is not too much to say that Napoleon sowed the seed of Italian unity.

**394. Attempted Revolution, 1820–1832.**—From 1815 to 1848 Austrian influence, shaped largely by Metternich, was everywhere reactionary, and during this prolonged period there was no government anywhere in Italy that was not of the absolutist type. No one of the states had a constitution, a parliament, or any vestige of popular political procedure. In July, 1820, Ferdinand of Naples was compelled by a revolutionary uprising to promulgate a constitution which was identical with that forced in the same year upon Ferdinand VII. of Spain. This ready-made instrument provided for a popularly elected parliament of one chamber, upon which were conferred large powers; a council of state composed of twenty-four members to advise the king; an independent judiciary; and a parliamentary deputation of seven members elected by the parliament, whose duty it was, in the event of the dissolution of parliament, to safeguard the observance of the constitution. In March, 1821, revolution broke out in Piedmont and, after the mild-tempered king,

[1] M. Cesaresco, The Liberation of Italy (London, 1895), 3.

[2] J. Holland Rose, in Encyclopædia Britannica, 11th ed., XV., 48. See also Fisher, The Republican Tradition in Europe, 158–159.

Victor Emmanuel, had abdicated in favor of his brother, Charles Albert, a temporary regent, the Prince of Carignano, under pressure, conceded to the people a replica of the Spanish fundamental law. In both Naples and Piedmont, however, the failure of the progressives was complete. The reformers proved to be lacking in unity of purpose, and when, under authorization of the greater continental powers, Austria intervened, every gleam of constitutionalism was promptly snuffed out. Similarly, in 1831–1832, there was in Modena, Parma, and the Papal States, widespread insurrection, and with rather more evidence of a growing national spirit; but again, with Austrian assistance, the outbreaks were suppressed.[1]

**395. The Revolution of 1848 and the New Constitutions.**—The turning point came with the great year of revolution, 1848. During the thirties and forties, by public agitation, by the organization of Mazzini's "Young Italy," by the circulation of patriotic literature, and in a variety of other ways, the ground was prepared systematically for the *risorgimento* upon which the patriots and the prophets had set their hearts. In 1846 a liberal-minded pope, Pius IX., instituted a series of reforms, and the example was followed forthwith by the princes of Piedmont (Sardinia) and Tuscany. In January, 1848, revolution broke out afresh in Naples and within a month Ferdinand II. was obliged to yield to public demand for a constitution. The instrument, promulgated February 10, provided for a legislative body consisting of a chamber of peers, appointed by the king for life, and a chamber of deputies, elected by the people. February 15 the sovereign of Tuscany, Leopold II., granted to his subjects a constitution of a similar character, making provision for a complete representative system.

February 5 the municipality of Turin, voicing a demand in which many of the nobility and high officials of state concurred, petitioned Charles Albert of Piedmont for the grant of a constitution. Three days subsequently, at the conclusion of a series of secret sessions of his council, the sovereign announced that "of his free and entire will" he believed the time to have come for an extension to his subjects of a full-fledged representative system of government, and March 4 there was promulgated a remarkable instrument—the *Statuto fondamentale del Regno*, modelled on the amended French Charter of 1830—which, with absolutely no modification of text, survives to the present day as the constitution of the Italian king-

[1] Cambridge Modern History, X., Chap. 4; Johnston, Napoleonic Empire in Southern Italy, II., Chap. 4; Thayer, Dawn of Italian Independence, I., 215–278.

dom.[1] March 14 there was issued by the Pope an instrument known as the *Statuto fondamentale del Governo temporale*, by which were constituted two legislative bodies—a high council and a chamber of deputies—and a council of state, composed of ten members and twenty-four advisors, to which was committed the task of preparing measures. Bills passed by the parliament were to be submitted to the Supreme Pontiff, who, after their discussion in consistory, should extend to them, or withhold from them, final approval. Before the year was far advanced the news of the overthrow of Louis Philippe, of the uprising in Germany, and of the fall of Metternich plunged the whole of Italy afresh in insurrection. Under the pressure of popular demand the Pope and the King of Naples sent troops to aid the northern states in the liberation of the peninsula from Austrian despotism, and for a time, under the leadership of the Piedmontese monarch, Charles Albert, all Italy seemed united in a broadly nationalistic movement. July 10 a new and extremely liberal constitution was adopted by a constituent assembly in Naples, and, February 9, 1849, following a breach between the Pope and the Roman parliament, the temporal power of the papacy was once more swept away and Rome, under an appropriate constitution, was proclaimed a republic.[2]

**396. The Reaction.**—The reaction, however, was swift and seemingly all but complete. At the earliest possible moment the king of Naples withdrew from the war, revoked the constitution which he had granted, and put the forces of liberalism to rout. With the assistance of France, Austria, and Naples, the Pope extinguished the Roman republic and re-established in all of its vigor the temporal power. By Austrian arms one after another of the insurrectionary states in the north and center was crushed, and Austrian influence in that quarter rose to its former degree of ascendancy. Constitutionalism gave place to absolutism, and the liberals, disheartened and disunited, were everywhere driven to cover. Only in Piedmont, whose sovereign, after the bitter defeat at Novara, had abdicated in favor of his son, Victor Emmanuel II. (March 23, 1849), was there left any semblance of political independence or civil liberty.[3]

[1] The nature of the governmental system provided in this instrument will be explained at length in the succeeding chapter.

[2] G. Garavani, La costituzione della repubblica romana nel 1798 e nel 1849 (Fermo, 1910).

[3] Elaborate accounts of the revolution of 1848 in Italy are contained in King, History of Italian Unity, I., Chaps. 9–19, and Thayer, Dawn of Italian Independence, II., Bks. 4–5. A good brief account is Cambridge Modern History, XI., Chap. 4 (bibliography, pp. 908–913). A suggestive sketch is Fisher, Republican Tradition in Europe, Chap. 9.

## III. The Achievement of Unification

**397. The Leadership of Piedmont.**—To all inducements to abrogate the constitution which his father had granted Victor Emmanuel continued deaf, and the logic of the situation began to point unmistakably to Piedmont as the hope of the patriotic cause. After 1848 the building of the Italian nation becomes, indeed, essentially the story of Piedmontese organization, leadership, conquest, and expansion. Victor Emmanuel, honest and liberal-minded, was not a statesman of the first rank, but he had the wisdom to discern and to rely upon the statesmanship of one of the most remarkable of ministers in the history of modern Europe, Count Cavour. When, in 1850, Cavour entered the Piedmontese ministry he was known already as an ardent advocate of both constitutionalism and national unification, and after, in 1852, he assumed the post of premier he was allowed virtually a free hand in the prosecution of policies designed to contribute to a realization of these ends. The original purpose of the king and of his minister was to bring about the exclusion of Austrian influence from Italy and to organize the various states of the peninsula into a confederacy under the nominal leadership of the Pope, but under the real supremacy of the sovereign of Piedmont. Ultimately the plan was so modified as to contemplate nothing short of a unification of the entire country under the control of a centralized, national, temporal government.

**398. The Annexations of 1859–1860.**—In 1855 Cavour signed an offensive and defensive alliance with France, and in 1859 Piedmont, with the connivance of her ally, precipitated war with Austria. According to an understanding arrived at by Cavour and the Emperor Napoleon III. at Plombières (June 20, 1858) Austria was to be expelled absolutely from Italian soil; Lombardo-Venetia, the smaller duchies of the north, the papal Legations, and perhaps the Marches, were to be annexed to Piedmont, the whole to comprise a kingdom of Upper Italy; Umbria and Tuscany were to be erected into a kingdom of Central Italy; the Pope was to retain Rome and Ferdinand Naples; and the four states thus constituted were to be formed into an Italian confederation. In the contest which ensued the Austrians were roundly defeated, but their only immediate loss was the ancient duchy of Lombardy. Despite Napoleon's boast that he would free Italy to the Adriatic, Venetia was retained yet seven years by the Hapsburgs. Under the terms of the treaty of Zürich (November 10), in which were ratified the preliminaries of Villafranca (July 11), Lombardy was

annexed to Piedmont. Years before (June 8, 1848) a Lombard plebiscite upon the question of such annexation had brought out an affirmative vote of 561,002 to 681.[1]

The gain arising from the annexation of Lombardy was in a measure counterbalanced by the cession of Savoy and Nice to France, in conformity with an agreement entered into before the war. In point of fact, none the less, the benefits which accrued to Piedmont from the Austrian war were enormous. Aroused by the vigor and promise of Piedmontese leadership, a large portion of central Italy broke into revolt and declared for union with Victor Emmanuel's dominion. In September, 1859, four assemblies, representing the grand-duchy of Tuscany, the duchies of Modena and Parma, and the Romagna (the northern portion of the Papal States), met at Florence, Modena, Parma, and Bologna, respectively, and voted unanimously for incorporation with Piedmont. During March, 1860, the alternatives of annexation and independence were submitted to the choice of the inhabitants of each of these districts, all males of age being privileged to vote, with the result of an aggregate of 792,577 affirmative votes in a total of 807,502. Under authority conferred by the Piedmontese parliament the king accepted the territories, the formal proclamation of the incorporation of Parma, Modena, and the Romagna being dated March 18, and that of the incorporation of Tuscany, March 22. Deputies were elected forthwith to represent the annexed provinces, and April 2, 1860, the enlarged parliament was convened at Turin. Within the space of a year the population of the kingdom had been more than doubled. It was now 11,000,000, or approximately half of that of the peninsula.

**399. Further Annexations: the Kingdom of Italy, 1861.**—Meanwhile the programme of Cavour and the king had been broadened to comprise a thoroughgoing unification of the entire country. With amazing rapidity the task was carried toward completion. Aided by Garibaldi and his famous Thousand, the people of Sicily and Naples expelled their Bourbon sovereign, and, at the plebiscite of October 21, 1860, they declared, by a vote of 1,734,117 to 10,979, for annexation to Piedmont. At the same time Umbria and the Marches were occupied by the Piedmontese forces, leaving to the Pope nothing save the Eternal City and a bit of territory immediately surrounding it. By votes of 97,040 to 380 and 133,077 to 1,212, respectively, these districts declared for annexation, and, December 17, 1860, a royal decree announced their final incorporation, together with that of Naples. January 27, 1861, general elections were held, and, February 18, there

[1] King, History of Italian Unity, II., Chap. 27.

was convened at Turin a new and enlarged parliament by which, March 18, was proclaimed the united Kingdom of Italy. Over the whole of the new territories was extended the memorable *Statuto* granted to Piedmont by Charles Albert thirteen years before, and Victor Emmanuel II. was acknowleged "by the grace of God and the will of the nation, King of Italy." [1]

**400. The Completion of Unification, 1866–1871.**— It remained but to consolidate the kingdom and to accomplish the annexation of the two Italian districts, Venetia and Rome, which were yet in foreign hands. Venetia was acquired in direct consequence of Italy's alliance with Prussia against Austria in 1866. A plebiscite of October 21–22, 1866, following the enforced cession of Venetia by Austria, October 3, yielded a vote of 647,246 to 47 for annexation. The union was sanctioned by a decree of November 4, 1866, and ratified by a law of July 18, 1867. The acquisition of Rome was made possible four years later by the exigencies of the Franco-German war. The conviction had been ripening that eventually Rome must be made the kingdom's capital, and when, in 1870, there was withdrawn from the protection of the papacy the garrison which France had maintained in Italy since 1849, the opportunity was seized to follow up fruitless diplomacy with military demonstrations. September 20 the troops of General Cadorna forced an entrance of the city and the Pope was compelled to capitulate. October 2 the people declared, by a vote of 133,681 to 1,507, for annexation; October 9 the annexation was proclaimed; and December 31 it was ratified by act of parliament. The guarantees of independence to be accorded the papacy were left to be determined in a subsequent statute.[2] By an act of February 3, 1871, the capital of the kingdom—already, in 1865, transferred from Turin to Florence—was removed to Rome; and in the Eternal City, November 27 following, was convened the eleventh parliament since the revolution of 1848, the fourth since the proclamation of the kingdom of Italy, the first since the completion of Italian unity.[3]

[1] King, History of Italian Unity, II., Chaps. 29–32.

[2] The resulting measure, the Law of Papal Guarantees, was enacted May 13, 1871. See p. 388.

[3] For a brief account of the final stages in the unification of Italy see Cambridge Modern History, XI., Chaps. 14, 19. The best presentation of the entire subject is that in the two volumes of King, History of Italian Unity, 1814–1871. Other works of value are W. J. Stillman, The Union of Italy, 1815–1895 (Cambridge, 1898); J. Probyn, Italy, 1815–1890 (London, 1884); M. Cesaresco, The Liberation of Italy (New York, 1894); P. Orsi, L'Italia moderna (Milan, 1901); F. Bertolini, Storia d'Italia dal 1814 al 1878 (Milan, 1880–1881); and E. Sorin, Histoire de l'Italie depuis 1815 jusqu'à la mort de V. Emm. (Paris, 1910). Among biographies mention may

## IV. The Constitution

**401. The Statuto.**—The formal constitution of the kingdom of Italy to-day is the *Statuto fondamentale del Regno* granted March 4, 1848, by Charles Albert to his Piedmontese subjects. To each of the territories successively annexed to the Piedmontese kingdom this instrument was promptly extended, on the basis of popular ratifications, or plebiscites; and when, in 1861, the kingdom of Piedmont was converted into the kingdom of Italy, the fundamental law, modified in only minor respects, was continued in operation. The *Statuto* was granted originally as a royal charter, and its author seems to have expected it to be final, at least until it should have been replaced as a whole by some other instrument. At the same time, there is little reason to doubt that from the outset there was contemplated the possibility of amendment through the agencies of ordinary legislation. In any case, there was put into the instrument no stipulation whatsoever relating to its revision, and none has ever been added. Upon a number of occasions since 1861 possible modifications of the constitutional text have been suggested, and even debated, but no one of them has been adopted. But this does not mean that the constitutional system of Italy has stood all the while unchanged. On the contrary, that system has exhibited remarkable vitality, growth, and adaptive capacity. In Italy, as in other states the constitution as it exists in writing is supplemented in numerous important ways by unwritten custom, and Italian jurists are now substantially agreed that custom is legitimately to be considered a source of public law.

**402. Legislative Amendment.**—A more important matter, however, is the extension and the readaptation of the constitution through parliamentary enactment. In the earlier days of the kingdom there was a disposition to observe rather carefully in practice the distinction between functions and powers of a legislative, and those of a constitutional, character. Gradually, however, the conviction grew that the

be made of G. Godkin, Life of Victor Emmanuel II. (2d ed., London, 1880); M. Cesaresco, Cavour (London, 1898); D. Zanichelli, Cavour (Florence, 1905); B. King, Mazzini (London, 1902). A very valuable biography, which indeed comprises virtually a history of the period 1848–1861, is W. R. Thayer, Count Cavour, 2 vols. (Boston, 1911). The monumental Italian work in the field is C. Tivaroni, Storia critica del risorgimento italiano, 9 vols. (Turin, 1888–1897). The principal documentary collection is N. Bianchi, Storia documentata della diplomazia Europea in Italia dall' anno 1814 all' anno 1861, 8 vols. (Turin, 1865–1872). Invaluable are L. Chiala, Lettere del Conte di Cavour, 7 vols. (Turin, 1883–1887), and D. Zanichelli, Scritti del Conte di Cavour (Bologna, 1892). For full bibliography see Cambridge Modern History, XI., 908–913.

constitutional system of the nation might be modified through the processes of ordinary legislation, and in Italy to-day the theory of parliamentary omnipotence is scarcely less firmly entrenched than it is in Great Britain. The parliamentary chambers have never directly avowed a purpose to amend a single article of the *Statuto*, but numerous measures which they have enacted have, with clear intent, taken from the instrument at some points, have added to it at others, and have changed both its spirit and its application. Care has been exercised that such enactments shall be in harmony with the public will, and in practice they are rarely brought to a final vote until the country shall have been given an opportunity to pass upon them at a general election. What has come to be the commonly accepted doctrine was stated forcefully, in the session of July 23, 1881, by Crispi, as follows: "I do not admit the intangibility of the *Statuto*. Statutes are made to prevent governments from retrograding, not from advancing. Before us there can be nothing but progress. . . . If we retain immutable the fundamental law of the state, we desire immobility, and should throw aside all advances which have thus far been made by the constituted authorities. I understand that in the *Statuto* of Charles Albert nothing is said of revision, and this was prudent. But how should this silence be interpreted? It should be interpreted in the sense that it is not necessary to the Italian Constitution that a constituent assembly should be expressly convoked, but that Parliament in its usual manner of operation is always constituent and constituted. Whenever public opinion has matured a reform, it is the duty of Parliament to accept it, even though the reform may bring with it the modification of an article of the *Statuto*." [1] It is in accord with the principles here enunciated that—to mention but a few illustrations—the law of December 6, 1865, regulating the organization of the judiciary, the Law of Papal Guarantees of 1871, and the measures of 1882 and 1895 overhauling and extending the franchise, were placed upon the statute books.

**403. Nature of the Constitution.**—The *Statuto*, in eighty-four articles, is an instrument of considerable length. It deals, successively, with the Crown, the rights and duties or citizens, the Senate, the Chamber of Deputies, the Ministers, the Judiciary, and matters of a miscellaneous character. The bill of rights contained in Articles 24-32 guarantees to all inhabitants of the kingdom equality before the law, liberty of person, inviolability of domicile and of property, freedom of the press, exemption from non-parliamentary taxation and, with

[1] Quoted by G. A. Ruiz, The Amendments to the Italian Constitution, in *Annals of the American Academy of Political and Social Science*, Sept., 1895, 38.

qualifications, freedom of assembly. It is constantly to be borne in mind, however, that, so overlaid is the *Statuto* with statutory enactments and with custom, that one cannot apprehend adequately the working constitution of the kingdom to-day, in respect to either general principles or specific governmental organs, through an examination of this document alone. In the language of an Italian publicist, the Italian constitution no longer consists of the Statute of Charles Albert. This forms simply the beginning of a new order of things. Many institutions have been transformed by laws, decrees, usages, and neglect, whence the Italian constitution has become cumulative, consisting of an organism of law grouped about a primary kernel which is the *Statuto*.[1]

[1] Ruiz, Amendments to the Italian Constitution, *loc. cit.*, 57. The text of the *Statuto* appears in P. Coglio e Malchiodi, Codice Politico Amministrativo. Raccolta completa di tutte le leggi e regolamenti concernenti la pubblica amministrazione nei suoi rapporti politici e amministrativi (6th ed., Florence, 1907), and in V. Gioia, Le leggi di unificazione amministrativa precedute dalla legge fondamentale del regno, 2 vols. (Palermo, 1879). It is printed also in Lowell, Governments and Parties, II., 346–354. There is a French version in F. R. Dareste, Les constitutions modernes, 2 vols. (Paris, 1883) I., 550–560. There is an English translation in Dodd, Modern Constitutions, II., 5–16, and another, by S. M. Lindsay and L. S. Rowe, in *Annals of the American Academy of Political and Social Science*, Nov., 1894. The Codice Politico Amministrativo contains a good collection of statutes, ordinances, and administrative regulations. The most comprehensive work on Italian constitutional law which has been written is F. Racioppi and I. Brunelli, Commento allo statuto del regno, 3 vols. (Turin, 1909). Among other treatises the following are of principal value: G. Arangio Ruiz, Storia costituzionale del regno di Italia, 1848–1898 (Florence, 1898); E. Brusa, Das Staatsrecht des Königreichs Italien (Leipzig, 1892), in Marquardsen's Handbuch; E. del Guerra, L'Amministrazione pubblica in Italia (Florence, 1893); and, for briefer treatment, G. Mosca, Appunti di diritto costituzionale (Milan, 1908) and I. Tambaro, Il diritto costituzionale italiano (Milan, 1909).

# CHAPTER XX

## THE ITALIAN GOVERNMENTAL SYSTEM

### I. The Crown and the Ministry

**404. Status of the Sovereign.**—The constitutional system of Italy comprises, according to the phraseology of the *Statuto*, a "representative monarchical government." The throne is hereditary, after the principle of the Salic Law; that is, it may be inherited only by and through males. Elaborate provision is made for the exercise of regal authority in the event of the minority or the incapacity of the sovereign. During a minority (which terminates with the close of the king's eighteenth year) the prince who stands next in the order of succession, provided he be twenty-one years of age, is authorized to act as regent. In the lack of male relatives the regency devolves upon the queen-mother, and in default of a queen-mother the regent is elected by the legislative chamber.[1] Upon ascending the throne, the king is required to take an oath in the presence of the legislative chambers faithfully to maintain and observe the constitution of the realm. The monarch is declared to be sacred and inviolable in his person, and there is settled upon him a civil list of 16,050,000 lire, of which amount at present, however, the sum of one million lire is repaid annually to the state. Since 1870 the royal residence has been the Palazzo del Quirinale, a palace which for generations, by reason of its elevated and healthful situation, was much frequented by the popes.

**405. Powers and Functions of the Crown.**—On paper, the powers of the crown appear enormous; in reality they are much less considerable, as is inevitably the fact wherever monarchy is tempered by parliamentarism. In the king alone is vested, by the *Statuto*, the executive power, and to him alone this power, in theory, still belongs. The exercise of it, however, devolves almost wholly upon a group of ministers, who are responsible, not to the crown, but to the parliament. In no continental country has there been a more deliberate or a more unreserved acceptance of the essential principles which underlie the

[1] Arts. 11–17. Dodd, Modern Constitutions, II., 6.

parliamentary system of Great Britain. No one of the three sovereigns of united Italy has ever sought for an instant to establish anything in the nature of personal government. The principle that the ministry shall constitute the working executive, and that it shall be continually responsible to the lower chamber of Parliament, has been so long observed in practice that it is now regarded as an inflexible law of the constitution. Under these limitations, however, the king approves and promulgates the laws, grants pardons and commutes sentences, declares war, commands all military and naval forces, concludes treaties, issues ordinances, creates senators, and makes appointments to all offices of state.[1] By the *Statuto* it is provided that treaties involving financial obligations or alterations of the territory of the state shall be effective only after receiving the sanction of the legislative chambers. In practice, treaties of all kinds are submitted regularly for such approval, save only such as comprise military conventions or foreign alliances. The power of the veto exists, but it is in practice never used. Rarely does the king attend the sessions of the cabinet, in which the policies of the government are discussed and its measures formulated and, save through the designation of the premier, in the event of a cabinet crisis, and within the domain of foreign relations, the royal power may be said to be brought to bear in direct manner upon the affairs of state only incidentally. As head of the nation, however, and visible token of its hard-won unification, the monarch fulfills a distinctly useful function. The reigning family, and especially the present sovereign, Victor Emmanuel III., is extremely popular throughout the country; so that, although in Italy, as elsewhere among European monarchies, there is an avowed republican element, there is every indication that royalty will prove an enduring institution.

**406. The Ministry: Composition.**—From what has been said it follows that the ministry in Italy, as in Great Britain and France, constitutes the actual executive. Nominally it consists of heads of departments, although occasionally a member is designated without portfolio. Of departments there are at present eleven, as follows: Foreign affairs; War; Marine; the Interior; Finance; the Treasury;[2] Public Instruction; Public Works; Justice and Ecclesiastical Affairs; Commerce, Industry, and Agriculture; and Posts and Telegraphs. Ordinarily the premier, or "president of the council," occupies the portfolio of the Interior. He is named by the king, and inasmuch as,

[1] Arts. 5–8. Dodd, Modern Constitutions, II., 5. Dupriez, Les Ministres, I., 292–297.

[2] Separated from Finance in 1889.

by reason of the multiplicity of Italian political parties, there is often no clearly distinguished "leader of the opposition," such as all but invariably stands ready to assume office in Great Britain, in the making of the appointment there is room for the exercise of considerable discretion. All remaining members of the ministry are designated by the crown, on nomination of the premier. In accordance with the provisions of a law of February 12, 1888, each minister is assisted by an under-secretary of state.

All ministers and under-secretaries possess the right to appear on the floor of either of the legislative chambers, and to be heard upon request; but no one of them is entitled to vote in either body unless he is a member thereof.[1] To be eligible for appointment to a portfolio or to an under-secretaryship it is not necessary that a man be a member of either chamber; but if an appointee is not in possession of such membership it is customary for him to seek the next seat that falls vacant in the Deputies, unless in the meantime he shall have been created a senator. In point of fact, the ministers are selected regularly from among the members of Parliament, and predominantly from the Chamber of Deputies. Only rarely has the premiership devolved upon a senator. Ministers of war and of marine, being chosen largely by reason of technical qualifications, are frequently members of the Senate by special appointment.

**407. The Ministry: Organization and Functions.**—The internal organization of the ministry—the inter-relations of the several departments and the relations sustained by each minister with the premier—are regulated largely by a decree of March 28, 1867, promulgated afresh, with minor modifications, August 25, 1876. Among matters which are required to be brought before the ministerial council are all projects of law which are to be submitted to the chambers, all treaties, all conflicts of administrative jurisdiction, all proposals relating to the status of the Church, petitions from the chambers, and nominations of senators, diplomatic representatives, and a wide range of administrative and judicial functionaries. By law there is enumerated further an extended list of matters which must be brought to the ministry's attention, though action thereupon is not made compulsory; and the range of subjects which, upon the initiative of the premier or that of other ministers, may be submitted for consideration is left purposely without limit. It is the business of the premier to convoke the ministers in council, to preside over their deliberations, to maintain, in respect to both administrative methods and political policy, as large a measure of ministerial uniformity and solidarity as may be; and to require from time to time

[1] Art. 66. Dodd, Modern Constitutions, II., 13.

from his colleagues full and explicit reports upon the affairs of each of the several departments. By reason, however, of the multiplicity of party groups in the chambers, the necessarily composite character politically of every cabinet, and the generally unstable political condition of the country, ministries rarely possess much real unity, and in the administration of the public business they are likely to be handicapped by internal friction. "The Italian ministry," says an able French writer, "is manifestly unable to fulfill effectively the three-fold purpose of a parliamentary cabinet. It exercises the executive power in the name, and under the authority, of the king; but it does not always know how to restrain Parliament within the bounds of its proper control, and it is obliged to tolerate the interference of deputies in the administration. Through the employment of the initiative, and of influence upon the acts of Parliament, it is the power which impels legislation; but not infrequently it is lacking in the authority essential to push through the reforms which it has undertaken, and the Chamber evades easily its control. It seeks to maintain harmony between the two powers (executive and legislative); but the repeated defeats which it suffers demonstrate to what a degree its work is impeded by the disorganization of parties." [1] For all of their acts the ministers are responsible directly to Parliament, which means, in effect, to the Chamber of Deputies; and no law or governmental measure may be put in operation until it has received the signature of one or more of the ministerial group, by whom responsibility for it is thereby explicitly assumed.

**408. The Promulgation of Ordinances.**—The administrative system of Italy is modelled, in the main, upon that of France. In the effort to achieve national homogeneity the founders of the kingdom indulged to excess their propensity for centralization, with the consequence that Italy has exhibited regularly an admixture of bureaucracy and liberalism even more confounding than that which prevails in the French Republic. In theory the administrative system is broadly democratic and tolerant; in practice it not infrequently lends itself to the employment of the most arbitrary devices. Abuse arises most commonly from the powers vested in the administrative officials to supplement legislation through the promulgation and enforcement of ordinances. By the constitution it is stipulated that the Executive shall "make decrees and regulations necessary for the execution of the laws, without suspending their execution, or granting exemptions from them." [2] This power, however, in practice, is stretched even further than is the similar power of the Executive in France, and with the result not infrequently of the

[1] Dupriez, Les Ministres, I., 291.
[2] Art. 6. Dodd, Modern Constitutions, II., 5.

creation of temporary law, or even the virtual negation of parliamentary enactment. Parliament is seldom disposed to stand very rigidly upon its rights; indeed, it sometimes delegates expressly to the ministry the exercise of sweeping legislative authority. The final text of the great electoral law of 1882, for example, was never considered in the chambers at all. After debating the subject to their satisfaction, the two houses simply committed to the Government the task of drawing up a permanent draft of the measure and of promulgating it by executive decree. The same procedure has been followed in other fundamental matters. And not merely the ministers at Rome, but also the local administrative agents, exercise with freedom the ordinance-making prerogative. "The preference, indeed," as is observed by Lowell, "for administrative regulations, which the government can change at any time, over rigid statutes is deeply implanted in the Latin races, and seems to be especially marked in Italy."[1]

## II. Parliament: the Senate

**409. Composition.**—Legislative power in Italy is vested conjointly in the king and Parliament, the latter consisting of two houses—an upper, the *Senato*, and a lower, the *Camera de ' Deputati*. The Senate is composed entirely of members appointed for life by the crown. The body is no true sense a house of peers. Its seats are not hereditary and its members represent not alone the great proprietors of the country but a wide variety of public functionaries and men of achievement. In the making of appointments the sovereign is restricted by the necessity of taking all appointees from twenty-one stipulated classes of citizens, and it is required that senators shall be of a minimum age of forty years. The categories from which appointments are made—including high ecclesiastics, ministers of state, ambassadors, deputies of prolonged service, legal and administrative officials, men who during as much as seven years have been members of the Royal Academy of Sciences or of the Superior Council of Public Instruction—may be reduced, broadly, to three: (1) high officials of church and state; (2) persons of fame in science or literature, or who by any kind of services or merit have brought distinction to the country; and (3) persons who for at least three years have paid direct property or business taxes to the amount of 3000 lire ($600). The total number of members when the *Statuto* was put in effect in 1848 was 78; the number in 1910 was 383. The last-mentioned number comprised the president of the

[1] Lowell, Governments and Parties, I., 166. On the Italian executive see Dupriez, Les Ministres, I., 281–329. An essay of value is M. Caudel, Parlementarisme italien, in *Annales des Sciences Politiques*, Sept., 1900.

Chamber of Deputies, 147 ex-deputies of six years' service (or men who had been elected to as many as three parliaments), one minister of state, six secretaries of state, five ambassadors, two envoys extraordinary, 23 officials of the courts of cassation and of other tribunals, 33 military and naval officials, eight councillors of state, 21 provincial functionaries, 41 members of the Royal Academy of Sciences, three members of the Superior Council of Public Instruction, two persons of distinguished services to the country, 71 payers of direct taxes in the amount of 3,000 lire, and 19 other scattered representatives of several categories. The absence of ecclesiastical dignitaries is to be accounted for by the rupture with the Vatican. The last members of this class to be named were appointed in 1866.

**410. Legislative Weakness.**—The prerogative of senatorial appointment has been exercised upon several occasions for the specific purpose of influencing the political complexion of the upper chamber. In 1886 forty-one appointments were made at one stroke; in 1890, seventy-five; and in 1892, forty-two. The Senate guards jealously its right to determine whether an appointee is properly to be considered as belonging to any one of the twenty-one stipulated categories, and if it decides that he is not thus eligible, he is refused a seat. But as long as the sovereign keeps clearly within the enumerated classes, no practical limitation can be placed upon his power of appointment.[1] In practice, appointment by the king has meant regularly appointment by the ministry commanding a majority in the lower chamber; and so easy and so effective has proved the process of "swamping" that the legislative independence of the Senate has been reduced almost to a nullity. In general it may be said that the body exercises the function of a revising, but no longer of an initiating or a checking, chamber. During the period 1861–1910 the government presented in the Chamber of Deputies a total of 7,569 legislative proposals, in the Senate but 598; and the number of projects of law originated within the Senate during this same period was but thirty-nine. In volume and range of legislative activity the nominated senate of Italy is distinctly inferior to the elected senate of France.[2]

**411. Projected Reform.**—Within recent years there has arisen a persistent demand for a reform of the Senate, to the end that the

[1] Of 1,528 appointments made between 1848 and 1910 but 63 were refused confirmation by the Senate.

[2] It is interesting to observe that, in the interest of governmental stability and permanence, Cavour favored the adoption of the elective principle in Italy. For illustrations of the weakness of the Italian Senate see C. Morizot-Thibault, Des droits des chambers hautes ou senats en matière des lois de finance (Paris, 1891), 156–175.

body may be brought into closer touch with the people and may be restored to the position of a vigorous and useful second chamber. In the spring of 1910 the subject was discussed at some length within the Senate itself, and at the suggestion of the ministry a special commission of nine members was created to study "the timeliness, the method, and the extent" of the proposed reforms. December 5, 1910, this commission brought in an elaborate report, written principally by Senator Arcoleo, a leader among Italian authorities upon constitutional law. After pointing out that among European nations the reconstitution and modernization of upper chambers is a subject of large current interest, the commission proposed a carefully considered scheme for the popularizing and strengthening of the senatorial body. The substance of the plan was, in brief; (1) that the chamber henceforth should be composed of 350 members; (2) that the membership should be divided into three categories, designated, respectively, as officials, men of science and education, and men of political or economic status; and (3) that members of the first category, not to exceed 120, should be appointed, as are all members at present, by the crown; but members of the other two should be elected by fifteen special colleges so constituted that their membership would represent actual and varied groups of interests throughout the nation. The professors in the universities, for example, organized for the purpose as an electoral college, should be authorized to choose a contingent of thirty representatives. Other elements to be admitted to a definite participation in the elections should include former deputies, larger taxpayers, provincial and communal assemblies, chambers of commerce, agricultural societies, and workingmen's associations. The primary idea of those who propounded the scheme was that through its adoption there would be established a more vital contact between the Senate and the varied forces that contribute to the life of the nation than can subsist under the existing order. Unfortunately, as many consider, the Senate voted not to approve the commission's project. It contented itself, rather, with a vote in favor of an enlargement of the classes of citizens from which senators may be appointed by the king, although, in February, 1911, it went so far as to request the ministry to present new proposals, and, in particular, a proposal to vest in the Senate the choice of its presiding officer. Toward a solution of the problems involved there has been (to 1912) no further progress. It is not improbable, however, that upon some such plan of modernization as was prepared by the commission of 1910 agreement eventually will be reached.[1]

[1] E. Pagliano, Il Senato e la nomina dei senatori (Rome, 1906); L. A. Magro, L' aristocrazia e il Senato (Catania, 1909); I. Tambaro, La réforme du Sénat

**412. Privileges and Powers.**—Within the Senate, as to-day constituted, the president and vice-president are named by the king; the secretaries are selected by the body from its own membership. The privileges of members are defined minutely. Save by order of the Senate itself, no senator may be arrested, unless apprehended in the commission of an offense; and the Senate is constituted sole judge of the alleged misdemeanors of its members—a curious duplication of an ancient prerogative of the British House of Lords. Ministers are responsible only to the lower house, and although there are instances in which a minister has retired by reason of an adverse vote in the Senate, in general it may be affirmed that the Senate's importance in the parliamentary régime is distinctly subordinate. The two chambers possess concurrent powers of legislation, except that all measures imposing taxes or relating to the budget are required to be presented first in the Deputies. By decree of the crown the Senate may be constituted a High Court of Justice to try cases involving treason or attempts upon the safety of the state, and to try ministers impeached by the Chamber of Deputies. When acting in this capacity the body is a tribunal of justice, not a political organization; but it is forbidden to occupy itself with any judicial matters other than those for which it was convened.[1]

## III. The Chamber of Deputies—Parliamentary Procedure

**413. Composition: Franchise Law of 1882.**—The lower legislative chamber is composed of 508 members chosen by the voters of the realm under the provisions of the electoral law of March 28, 1895. In no country of western Europe is the privilege of the franchise more restricted than in Italy; yet progress toward a broadly democratic scheme of suffrage has been steady and apparently as rapid as conditions have warranted. The history of the franchise since the establishment of the present kingdom falls into three periods, delimited by the electoral laws of 1882 and 1895. Prior to 1882 the franchise was, in the main, that established by the electoral law of December 17, 1860, modified by amendments of July, 1875, and May, 1877. It was restricted to property-holders who were able to read and write, who had attained the age of twenty-five, and who paid an annual tax

italien, in *Revue du Droit Public*, July–Sept., 1910, and Les débats sur la réforme du Sénat italien, ibid., July–Sept., 1911; M. Scelle, Réforme du Sénat italien, ibid., Oct.–Dec., 1911; Nazzareno, La riforma del Senato, in *Rivista di Diritto Pubblica*, III., 171. The report of the commission of 1910 is contained in Per la riforma del Senato; relazione della commissione (Rome, 1911).

[1] Art. 36. Dodd, Modern Constitutions, II., 10.

of at least forty lire. Under this system less than two and a half per cent of the population possessed the right to vote.

In 1882, after prolonged consideration of the subject, the Government carried through Parliament a series of measures—co-ordinated in the royal decree of September 24—by which the property qualification was reduced from forty lire to nineteen lire eighty centesimi and the age limit was lowered to twenty-one years. The disqualification of illiteracy was retained, and a premium was placed upon literacy by the extension of the franchise, regardless of property, to all males over twenty-one who had received a primary school education. There were minor extensions in other directions. The net result of the law of 1882 was to raise the number of voters at a stroke from 627,838 to 2,049,461, about two-thirds of the new voters obtaining the franchise by reason of their ability to meet the educational qualification.[1] An incidental effect of the reform was to augment the political influence of the cities, because in them the proportion of illiterates was smaller than in the country districts. Small landed proprietors, though of a more conservative temperament, and not infrequently of a better economic status, than the urban artisans, were commonly unable to fulfill the scholarship qualification.

The law of 1882 provided for elections by general ticket, i. e., on the principle of *scrutinio di lista*. An act of May 8, 1891, abolished the general ticket and created a commission by which the country was divided into 508 electoral districts, each entitled to choose one deputy. By a law of June 28, 1892, there were introduced various reforms in the control and supervision of elections, and by another of July 11, 1894, new provisions were established for the revision of electoral and registration lists. Finally, March 28, 1895, there was promulgated an elaborate royal decree whereby the entire body of electoral laws enacted since the establishment of constitutional government, and at the time continuing in operation, was co-ordinated afresh. The existing system was not altered fundamentally, although the method of making up the voting-lists was changed, with the result that the number of electors was somewhat diminished.

**414. The Franchise To-day.**—The Italian voter to-day must possess the following qualifications: (1) Italian citizenship; (2) age of twenty-one, or over; (3) ability to read and write; and (4) successful passage of examinations in the subjects comprised in the course of compulsory elementary education. The last-mentioned qualification is not, however, required of officials, graduates of colleges, professional men, persons who have served two years in the army, citizens who pay a

[1] Lowell, Governments and Parties, I., 157.

direct tax annually of not less than nineteen lire eighty centesimi, those who pay an agricultural rental of 500 lire, those who pay house rent of from 150 lire in communes of 2,500 people to 400 lire in communes of over 150,000, and certain less important classes. So serious at all times has seemed the menace of illiteracy in Italy that the establishment of manhood suffrage has but rarely been proposed. Under the existing system the extension of education carries with it automatically the expansion of the franchise, though the obstacles to universal education are still so formidable that the democratizing of the state proceeds but slowly.[1] In 1904 the number of enrolled electors was 2,541,327—29 per cent of the male population over twenty-one years of age, and 7.67 per cent of the total population—exclusive of 26,056 electors temporarily disfranchised by reason of being engaged in active military service. At the elections of November, 1904, the number of qualified electors who voted was 1,593,886, or but 62.7 per cent of those who possessed the privilege. The proportion of registered electors who actually vote is kept down by the prosaic character of Italian electoral campaigns, by the influence of the papal *Non Expedit*,[2] and, most of all, by the habitual indifference of citizens, who, if the truth be told, for the most part have never displayed an insatiable yearning for the possession of the voting privilege. With the exception of the Socialists, no party has a clear-cut, continuous programme; none, save again the socialists, attempts systematically to arouse the voters at election time.

**415. Electoral Reform.**—Notwithstanding these facts, there has been, in recent years, a somewhat insistent demand for electoral reform. The Luzzatti ministry fell, in March, 1911, primarily because a plan of suffrage extension which it had proposed was not to be put in operation before 1913. June 10, 1911, the Giolitti ministry which succeeded laid before the Chamber the text of a measure which, if adopted, would go far toward the establishment of universal male suffrage. The proposal was that practically all male citizens over thirty years of age, and all over twenty-one who have performed the military service required by the state, should be given the privilege of voting, irrespective of their ability to read and write. This project, after being debated at length, was adopted in the Chamber of Deputies early in 1912 by the enormous majority of 392 to 61. In the event of its final enactment the existing electorate will be increased from three millions to two and a half times that number and a general overhauling of electoral methods and machinery will be rendered necessary. The

[1] King and Okey, Italy To-day, Chap. 12.

[2] See p. 400.

grounds upon which the change is urged are, first, the example of other nations and, second, the political and economic progress which Italy has achieved within the past generation. Serious students doubt whether the time is ripe for so radical a step. One half of the proposed electorate would be wholly illiterate.[1]

**416. Electoral Procedure.**—Save during the years 1882–91, when the *scrutinio di lista* was in operation, deputies have been chosen uniformly from single-member districts. There are to-day 508 such districts. No candidate is returned unless he not only polls a number of votes in excess of one-sixth of the total number of enrolled electors within the district, but has also an absolute majority of all the votes cast. If, after balloting, it is found that no candidate meets this requirement, a second ballot (*ballottaggio*) takes place one week subsequently.[2] At each polling place the presiding officer and "scrutineers" are chosen by the voters present. The method of voting is simple. In the polling-booth stands a table, on which are placed two square glass boxes, one empty, the other containing the voting papers. As the list of enrolled electors is read alphabetically, each man steps forward, receives a ballot paper, takes it to an adjoining table and writes on it the name of the candidate for whom he wishes to vote, folds the paper, and deposits it in the box reserved for the purpose. After the list has been read through it is the right of any voter who was not present to respond when his name was called to cast his ballot in a similar manner. The polling hours extend, as a rule, from 9 A. M. to 4 P. M.[3]

**417. Qualifications and Privileges of Members.**—A deputy is not required to be a resident of the district from which he is chosen. He must, however, be a citizen; must be at least thirty years of age; must be in possession of full civil and political rights; and must not belong

[1] For the text of the Giolitti proposals see *Il Seculo*, June 11, 1911. On Italian electoral reform see A. Piebantoni, La riforma della legge elettorale (Naples, 1909); G. Bandini, La riforma elettorale con la rappresentanza proporzionale nelle elezioni politiche (Rome, 1910); G. Sabini, La riforma del sistema elettorale in Italia (Turin, 1910); Siotto-Pintor, Estensione del suffragio e distribuzione della rappresentanza, in *Rivista di Diritto Pubblico*, Dec., 1911, and Le riforma del régime elettorale e le dottrine della rappresentanza politica e dell' elettorato nel secolo XX. (Rome, 1912).

[2] At the elections of March, 1909, in 75 of the 508 districts no candidate received an adequate majority. In 57 of these districts the candidate who, at the first ballot, had received the largest number of votes was elected at the second ballot. The political effect of the second ballot is slight. At the election of 1900 there were 77 second ballotings; at that of 1904, 39. A. N. Holcombe, Direct Primaries and the Second Ballot, in *Amer. Political Science Review*, Nov., 1911; A. F. Locatelli, Considerazioni intorno all' opportunità di abolire il ballottaggio, in *La Riforma Sociale*, July–Aug., 1910.

[3] King and Okey, Italy To-day, 14.

to any of the classes or professions whose members are debarred by law. All salaried government officials, all persons receiving stipends from the state, and all persons ordained for the priesthood or filling clerical office are disqualified outright. Furthermore, while officers in the army and navy, ministers, under-secretaries, and various other higher functionaries may be elected, their number must never exceed forty, not including the ministers and under-secretaries. Neither senators nor deputies receive a salary or other compensation, a fact that undoubtedly accounts in some measure for the uniformly slender attendance in the chambers. Members are permitted, however, to travel free throughout Italy by rail, or on steamers belonging to lines that have a government contract containing a stipulation upon the subject. Measures providing for the payment of members have been proposed from time to time, but none have received the approval of the two chambers. A measure of the sort introduced in 1882 by Francesco Crispi, when a deputy, was rejected by the lower house. More recently, in the electoral bill voted by the Chamber of Deputies in 1912 provision is made for the payment of deputies; but at the time of writing final action upon this project has not been taken. Deputies are elected nominally for a five-year period, which is the maximum duration of a parliament. In point of fact, a dissolution is practically certain to intervene before the expiration of the full term, and the average interval between elections is nearer three years than five. If for any reason a deputy ceases to perform his duties, the electoral district that chose him is called upon forthwith to elect a new representative.

**418. The Chambers: Organization.**—The constitution does not prescribe definitely that the parliament shall be assembled annually. It stipulates merely that the sessions of the two houses shall begin and end at the same time, that a meeting of one house at a time when the other is not in session is illegal, and that measures enacted under such circumstances are void.[1] Custom and the necessities of administration, however, render it incumbent upon the crown to convoke the chambers in at least one session each year, unless, indeed, as has sometimes happened, a session is so prolonged as to extend, with occasional recesses, over an entire year, or even two years.

The president and vice-president of the Senate are designated by the crown, but the president, vice-presidents, and secretaries of the lower chamber are chosen by the chamber itself from among its own members at the beginning of each session, for the entire session. The president of the Deputies, although empowered to appoint certain

[1] Art. 48. Dodd, Modern Constitutions, II., 12.

committees, such as those on rules and contested elections, is not infrequently re-elected again and again without regard to party affiliations, after the manner of the Speaker of the British House of Commons. The membership of the Chamber of Deputies is divided into nine *uffici*, or sections, and that of the Senate into five. A fresh division, by lot, takes place every two months. The principal function of the *uffici* is the election of those committees for whose constitution no other provision is made. In each chamber the most important of all committees, that on the budget, is elected directly by the chamber. In the Deputies certain other committees are elected in the same way, while, as has been said, those on elections and on rules are appointed by the president. But committees specially constituted for the consideration of particular measures are made up of members chosen from the various *uffici*, unless the chamber prefers to designate some other method.

**419. The Chambers: Procedure.**—Each house frames its own rules of procedure. By the constitution it is stipulated that the sessions shall be public (with the provision that upon the written request of ten members secret sessions may be held); that Italian shall be the official language; that no session or vote of either house shall be valid unless an absolute majority of the members is present; and that neither house shall receive any deputation, or give hearings to persons other than the legislative members, ministers, and commissioners of the Government.[1] Except such as relate to finance, bills on any subject may originate in either house, and at the initiative of the Government or of private members, though in practice all proposals of importance emanate from the Quirinal. The ministers appear regularly on the floor of the two chambers, to advocate the measures of the Government and to reply to inquiries. The right of interpellation is not infrequently exercised, though the debate and vote following a challenge of the ministry fall regularly after an interval of some days, instead of at once, as in the French system, thus guarding somewhat against precipitancy of action. A measure which is passed in one house is transmitted to the other for consideration. After enactment in both houses, it is presented to the king for approval, which, in practice, is never withheld. A bill rejected by the crown, or by either house, may not be reintroduced during the same session. Votes are taken by rising and sitting, by division, or by secret ballot. The third of these methods is obligatory in all final votes on enactments, and on measures of a

[1] Arts. 52–54, 59, 62. Dodd, Modern Constitutions, II., 12–13. In practice the requirement of the presence of an absolute majority of members is sometimes disregarded.

personal character. It is specifically enjoined that deputies shall represent the nation as a whole, and not the districts from which they are chosen, and to this end no binding instructions may be imposed upon them by the electors.[1] Except when taken in the actual commission of an offense, deputies are exempt from arrest during the continuance of a session, and they may not be proceeded against in criminal matters without the previous consent of the Chamber. Neither senators nor representatives may be called to account for opinions expressed, or for votes cast, in the performance of their official functions.

## IV. The Judiciary

**420. General Aspects.**—The provisions of the *Statuto* respecting the administration of justice are brief and general. Justice, it is declared, emanates from the king and is administered in his name by the judges whom he appoints. These judges, after three years of service, are irremovable. Proceedings of courts in civil cases and hearings in criminal cases are required to be public. No one may be withdrawn from his ordinary legal jurisdiction; and no modification may be introduced in respect to courts, tribunals, or judges, save by law.[2] On the basis of these principles there has been built up a system of tribunals which differs in but few important respects from the systems in operation in the other Latin countries of Europe. It consists, in part, of courts which have been carried over from the period preceding Italian unification and, in part, of courts which owe their existence to legislation subsequent to 1861. The model upon which the system has been developed is the judicial hierarchy of France, and it differs from this system in little save the existence, as will appear, of five largely independent courts of cassation instead of one.

**421. The Ordinary Courts.**—For purposes of justice the kingdom is divided into 1,535 *mandamenti*,[3] 162 tribunal districts, and 20 appellate court districts. Within each *mandamento* is a *pretura*, or magistracy, which exercises jurisdiction in civil cases and in cases of misdemeanors (*contravvenzioni*) and offenses (*delitte*) punishable by imprisonment not exceeding three months, or banishment not exceeding one year,

[1] Art. 41. Dodd, Modern Constitutions, II., 11.

[2] Arts. 68–73. Ibid., II., 14–15.

[3] Prior to 1901 the administrative and electoral *mandamenti* and the *mandamenti giudiziarii* were identical geographically, and there were 1,805 of them in the kingdom. By a law of the year mentioned the judicial *mandamenti* were reduced in number to 1,535.

or a fine not exceeding 1,000 lire. In minor civil cases, involving sums not in excess of 100 lire, jurisdiction is vested in justices of the peace (*giudici conciliatori*) who likewise, upon request, act as arbitrators in cases involving any amount. In each of thirteen of the largest towns there is a *pretura* which exercises penal jurisdiction exclusively. Next above the *pretori* stand the penal courts, one in each of the 162 tribunal districts. These exercise jurisdiction in the first instance in offenses involving a maximum imprisonment of ten years or a fine of more than 1,000 lire. To them appeal may be carried from the decisions of the *pretori*. Closely associated are the courts of assize, which possess original jurisdiction in cases involving a penalty of imprisonment for life, or for a period longer than a minimum of five, and a maximum of ten, years. Save when the Senate is constituted a high court of justice, these tribunals have exclusive jurisdiction of all press offenses and of all cases involving attacks upon the security of the state. As a rule, the courts of assize make use of the jury. From their decisions there is no appeal, save upon a point of form, and appeal lies solely to the court of cassation at Rome. From the penal tribunals appeal lies, in cases not dealt with by the assize courts, to the twenty courts of appeal.

At the top of the system stand five largely independent courts of cassation, located at the old capitals of Turin, Florence, Naples, Palermo, and Rome. Each of these exercises, within its own territory, final jurisdiction in all cases involving the ordinary civil law. The court of cassation at Rome, it is true, has been given exclusive jurisdiction in conflicts of competence between different courts, conflicts between the courts and the administrative authorities, the transfer of suits from one tribunal to another, writs of error in criminal cases, and a variety of other special matters. But, aside from this, the five tribunals are absolutely equal in function; there is no appeal from one to another, and the decisions arrived at by one do not constitute precedents which the others are obligated to recognize. One of the most striking aspects, indeed, of the Italian judicial system is its lack of centralization; though it should be added that the centralizing principle which, since 1870, has dominated so notably all other departments of the government has been gradually winning its way in the judiciary.

**422. The Administrative Courts.**—In Italy, as in continental countries generally, there is preserved a sharp distinction between public and private law; but the separation of functions of the ordinary and the administrative courts is much less clear-cut than in France and elsewhere. In 1865, indeed, the surviving administrative courts

of the states which had been drawn into the kingdom were abolished and it was arranged that the ordinary courts should exercise unrestricted jurisdiction in all criminal cases and in all civil cases in which, by the decision of the Council of State, a civil or political right was involved. The system worked poorly and by laws of June 2, 1889, and May 1, 1890, a special section of the Council of State (composed of a president and eight councillors named by the king) was set off to serve as an administrative court, while at the same time an inferior administrative jurisdiction was conferred upon the *giunta* (prefect and certain assistants) of the province. In practice to-day, when the legality of acts committed by the administrative officials is called in question, the ordinary courts exercise jurisdiction, if the question is one of private *right;* if it is one merely of private *interest*, it goes for decision to an administrative tribunal. In most continental countries *all* cases involving the legality of official acts fall within the domain of the administrative courts.[1]

## V. Local Government

**423. Historical Basis.**—In her ancient territorial divisions Italy had once the basis of a natural and wholesomely decentralized system of local government. Instead of availing themselves of it, however, the founders of the present kingdom preferred to reduce the realm to a *tabula rasa* and to erect within it a wholly new and symmetrical hierarchy of territorial divisions and governmental organs. By a great statute of March 20, 1865, there was introduced in the kingdom a system of provincial and communal organization, the essentials of which were taken over in part from Belgium, but more largely from France. The functions and relations of the various local agencies were amplified and given substantially their present form in the law of December 30, 1888, supplemented and amended by acts of July 7, 1889, and July 11, 1894. So closely has the French model been adhered to throughout that the resemblance between the two systems amounts almost to duplication. The system of Italy calls, therefore, for no very extended independent description.

The units of local government are four in number—the province, the *circondaro*, the *mandamento*, and the commune. Of these, the first and last alone possess vitality, distinct interests, and some measure of autonomy; and throughout the entire series runs that same principle of thoroughgoing centralization which is the pre-eminent

[1] There is a brief description of the Italian judicial system in Lowell, Governments and Parties, II., 170–178.

characteristic of the local governmental system of France. The *circondaro*, corresponding to the French *arrondissement*, is essentially an electoral division. Strictly, there are in the kingdom 197 *circondarii;* but 87 districts comprising the province of Mantua and the eight provinces of Venetia are, in all save name, *circondarii* also. The 1806 *mandamenti*, or cantons, are but subdivisions of the provinces for administrative purposes.

**424. The Province: Prefect and Council.**—There are in the kingdom 69 provinces, varying considerably in size but with an average population of 450,000 to 500,000. The Italian province corresponds closely to the French department. At its head is a prefect, appointed by the crown and directly responsible to the Minister of the Interior. Like the French prefect, the Italian is a political official, and the fact not merely influences his appointment but affects greatly his conduct in office. As representative and agent of the central government the prefect publishes and executes the laws, supervises the provincial administration, opens and closes sessions of the provincial council and sanctions or vetoes the measures of that body, and safeguards in general the interests of the Government in the province.

Within each province is a council of from 20 to 60 members, elected for a period of six years on a franchise somewhat broader than that which prevails in parliamentary elections. One-half of the membership is renewed triennially. The council meets regularly once each year, nominally for a month's session; but an extraordinary session may be convened at any time by the prefect, by the deputation, or upon call of one-third of the councillors. Aside from the voting of the provincial budget, the powers of the council are relatively meager. In part, e. g., in respect to the maintenance of highways, the control of secondary and technical education, and a share in the supervision of charity, they are obligatory; in part they are merely permissive. A deputation, or commission, of from six to ten persons, elected by the council from its own membership, represents the council in the intervals between its sittings and carries on the work which it may have in hand. The prefect is advised by a prefectorial council of three members appointed by the Government, and he is further assisted by a *giunta* of six members, four of whom are elected by the provincial council, the other two being drawn from the prefectorial council. It is the business of the *giunta* to assist the prefect and sub-prefects in the supervision of local administration and to serve as a tribunal for the trial of cases arising under the administrative law. The prefect and the *giunta* possess large, and to a considerable degree, discretionary powers of control over the proceedings of the council; and the prefect, representing as he does the central gov-

ernment exclusively, can be called to account only by his superiors at Rome.

**425. The Commune: Syndic and Council.**—As in France, the commune is the least artificial and the most vigorous of the local governmental units. In June, 1911, there were in Italy a total of 8,323 communes, besides four boroughs in Sardinia not included in the communal organization. Each commune has a council of from 15 to 80 members, according to its population, elected for a period of six years, one-half retiring every three years. The communal franchise is appreciably broader than the parliamentary. It extends to all Italian citizens twenty-one years of age who can read and write, provided they are on the parliamentary list, or pay any direct annual contribution to the commune, or comply with various other very easy conditions. The council holds two regular sessions a year, though in the large towns it, in point of fact, meets much more frequently. Between sittings its work is carried on by a *giunta*, which serves as a committee to execute the resolutions of the council and to draft its budget and by-laws. The powers of the council are comprehensive. It is obligated to maintain streets, roads, and markets; to provide for elementary education; to make suitable arrangements for the relief of the poor, the registration of births and deaths, and of electors; to establish police regulations and prisons; and, under varying conditions, to attend to a wide variety of other matters. The range of its optional activities is almost boundless. The council may establish theatres, found museums, subsidize public amusements, and, indeed, go to almost any length in the regulation of local affairs and the expenditure of local funds.[1]

As its chief official, every commune has a *sindaco*, i. e., a syndic, or mayor. Prior to 1896 the syndic was chosen by the communal council from its own members, if the commune had more than 10,000 inhabitants, or was the capital of a province or *circondaro;* otherwise he was appointed from among the members of the council by the king. In the great majority of communes the procedure was of the second type. Since 1896 the syndic has been chosen regularly in all communes by the council, for a term of three years, together with a secretary, elected in the first instance for two, but afterwards for periods of not less than six, years. Despite the fact that the syndic is now elected universally by the communal council, his position is not that exclusively of executive head of the local community. Like the prefect, he is a government official, who, save under very exceptional circumstances, may be removed only with the prefect's permission. He may not be called

[1] For an arraignment of the extravagance of the local governing authorities see King and Okey, Italy To-day, 267.

to account except by his superiors, or sued save with the permission of the crown.[1]

[1] For a brief account of local government in Italy see King and Okey, Italy To-day, Chap. 14. More extended treatment will be found in E. del Guerra, L'Amministrazione pubblica in Italia (Florence, 1893) and G. Greco, Il nuova diritto amministrativo Italiano (Naples, 1896).

## CHAPTER XXI

### STATE AND CHURCH—POLITICAL PARTIES

#### I. Quirinal and Vatican

Italy differs from other nations of importance in containing what is essentially a state within a state. The capital of the kingdom is likewise the capital of the Catholic world—the administrative seat of a government which is not only absolutely independent of the government of the Italian nation but is in no small degree antagonistic to it. It need hardly be remarked that the consequences of this anomalous situation affect profoundly the practical operations of government, and especially the crystallization and programmes of political parties, in the peninsula.

**426. Termination of the Temporal Power.**—One goal toward which the founders of the kingdom directed their efforts was the realization of the ideal of Cavour, "a free church in a free state." A thoroughgoing application of this principle proved impracticable, but such progress has been made toward it as to constitute, for Italy, a veritable revolution. On the 20th of September, 1870, the armed forces of King Victor Emmanuel crossed the bounds of the petty papal dominion about Rome, entered the city, and by a few sharp strokes beat down all forcible opposition to the sovereignty of the united Italian nation. Pope Pius IX. refused absolutely to acquiesce in the loss of his temporal dominion, but he was powerless to prevent it. His sole hope of indemnity lay in a possible intervention of the Catholic powers in his behalf—a hope which by Prussia's defeat of France and the downfall of the Emperor Napoleon III. was rendered extremely unsubstantial. The possibility of intervention was, however, sufficiently considerable to occasion real apprehension on the part of Victor Emmanuel and of those attached to the interests of the young nation. In part to avert complications abroad, as well as with an honest purpose to adjust a difficult situation, the Government made haste to devise what it considered a fair, safe, and honorable settlement of its relations with the papal authority. The result was the fundamental statute known as the Law of the Papal Guarantees, enacted March 21, 1871, after a heated parlia-

mentary contest lasting upwards of two months, and promulgated under date of May 13 following.[1]

**427. The Law of Papal Guarantees, 1871: Papal Prerogatives.**—This important measure, which remains to this day unchanged, falls into two principal parts. The first is concerned with the prerogatives of the Supreme Pontiff and of the Holy See; the second regulates the legal relations of church and state within the kingdom. In a series of thirteen articles there is enumerated a sum total of papal privileges which constitutes the Vatican an essentially sovereign and independent power. First of all, the Pope is declared sacred and inviolable, and any offense against his person is made punishable with the same penalty as a similar offense against the person of the king. In the second place, the Italian Government "grants to the Supreme Pontiff, within the kingdom, sovereign honors, and guarantees to him the pre-eminence customarily accorded to him by Catholic sovereigns."[2] Diplomatic agents accredited to him, and envoys whom he may send to foreign states, are entitled to all the prerogatives and immunities which international law accords to diplomatic agents generally. In lieu of the revenues which were cut off by the loss of the temporal dominion there is settled upon the Pope a permanent income to be paid from the treasury of the state. For the uses of the Holy See—the preservation and custody of the apostolic palaces, compensation and pensions for guards and attachés, the keeping of the Vatican museums and library, and any other needful purposes—there is reserved the sum of 3,225,000 lire ($645,000) annually, to be "entered in the great book of the public debt as a perpetual and inalienable income of the Holy See."[3] The obligation thus assumed by the state may never be repudiated, nor may the amount stipulated be reduced. Permanent possession, furthermore, of the Vatican and Lateran palaces, with all buildings, museums, libraries, gardens, and lands appertaining thereto (including the church of St. Peter's), together with the villa at Castel Gandolfo, is expressly guaranteed, and it is stipulated, not only that these properties shall be exempt from all taxation and charges and from seizure for public purposes, but that, except with papal permission, no public official or agent in the performance of his public duties shall so much as enter the papal palaces or grounds, or any place where there may be in session at any time a conclave or ecumenical council. During a vacancy of the pontifical chair no judicial or political functionary may, on any pretext, invade

[1] Text in Coglio e Malchiodi, Codice Politico Amministrativo. An English version is printed in Dodd, Modern Constitutions, II., 16–21.

[2] Art. 3. Dodd, Modern Constitutions, II., 16.

[3] Art. 4. Ibid., 17.

the personal liberty of the cardinals, and the Government engages specifically to see to it that conclaves and ecumenical councils shall not be molested by external disorder.

**428. Papal Freedom in the Exercise of Spiritual Functions.**—In the exercises of spiritual functions the independence of the Holy See is fully secured. The Pope may correspond freely with the bishops and with "the whole Catholic world," without interference from the Government.[1] Papers, documents, books, and registers deposited in pontifical offices or in congregations of an exclusively spiritual character are exempt from all legal processes of visit, search, or sequestration, and ecclesiastics may not be called to account by the civil authorities for taking part officially in the promulgation of any act pertaining to the spiritual ministry of the Holy See. To facilitate the administration of papal affairs the right is granted of maintaining separate postal and telegraph offices, of transmitting sealed packages of correspondence under the papal stamp, either directly or through the Italian post, and of sending couriers who, within the kingdom, are placed on an equal footing with emissaries of foreign governments.

**429. Legal Relations of Church and State.**—The regulations by which the relations of church and state are governed more specifically begin with the abolition of all restrictions upon the right of members of the Catholic clergy to assemble for ecclesiastical purposes. With provisional exceptions, the *exequatur*, the *placet*, and all other forms of civil authorization of spiritual measures are done away.[2] The state yields its ancient right of nominating to bishoprics, and the bishops themselves are no longer required to take oath of fidelity to the king. In matters of spiritual discipline it is stipulated that there shall be no appeal to the civil courts from the decisions of the ecclesiastical authorities. If, however, any ecclesiastical decision or act contravenes a law of the state, subverts public order, or encroaches upon the rights of individuals, it is, *ipso facto*, of no effect; and in respect to these things the state is constituted sole judge. The Church, in short, is granted a very large measure of freedom and of autonomy; but at the same time it is not so far privileged as to be removed beyond the pale of the public law. If its measures constitute offenses, they are subject to the provisions of the ordinary criminal code.[3]

[1] Art. 12. Dodd, Modern Constitutions, II., 19.

[2] On the Government's use of the *exequatur* since 1871 see King and Okey, Italy To-day, 253.

[3] By act of July 12, 1871, articles 268–270 of the Italian penal code were so modified as to render ecclesiastics liable to imprisonment of from six months to five years, and to fines of from one thousand to three thousand lire, for spoken or written attacks upon the state, or for the incitement of disorder.

**430. Papal Opposition to the Existing System.**—The arrangements thus comprised in the Law of Guarantees have never received the sanction of the papacy. They rest exclusively upon the authority of the state. Pope Pius IX., flatly refusing to accept them, issued, May 15, 1871, an encyclical to the bishops of the Church repudiating the Law and calling upon Catholic princes everywhere to co-operate in the restoration of the temporal power. The call was unheeded, and the Pope fell back upon the obstructionist policy of maintaining absolutely no relations with the Italian kingdom. His successor, Leo XIII., preserved essentially the same attitude, and, although many times it has been intimated that the present Pope, Pius X., is more disposed to a conciliatory policy, it still is true that the only recognition which is accorded the Quirinal by the Vatican is of a purely passive and involuntary character. The Pope persists in regarding himself as "the prisoner of the Vatican." He will not so much as set foot outside the petty domain which has been assigned to him, because his doing so might be construed as a virtual recognition of the legality of the authority of the kingdom within the Eternal City. Not a penny of the annuity whose payment to the Holy See was stipulated in 1871 has been touched. By the Italian Government the annuity itself has been made subject to quinquennial prescription, so that in the event of a recognition of the Law at any time by the papacy not more than a five-year quota, with interest, could be collected.

As to the measure of fidelity with which the Government has fulfilled the obligations which it assumed under the Law, there is, naturally, a wide divergence of opinion. The authors of what is probably the most authoritative book on Italy written from a detached and impartial point of view say that "on the whole, one is bound to conclude that the Government has stretched the Law of Guarantees in its own interest, but that the brevity and incompleteness of the Law is chiefly responsible for the difficulty in construing it." [1] Undoubtedly it may be affirmed that the spirit of the Law has been observed with consistency, though the exigencies of temporal interest have compelled not infrequently the non-observance of the letter. So long as the Vatican persists in holding rigidly aloof from co-operation in the arrangement the Law obviously cannot be executed with the spontaneity and completeness that were intended by its framers. The situation is unfortunate, alike for state and church, and subversive of the best interests of the Italian people.[2]

[1] King and Okey, Italy To-day, 255.

[2] For a brief discussion of the subject of church and state in Italy see King and Okey, Italy To-day, Chaps. 2 and 13. A useful book is R. de Cesare, Roma e lo stato del papa dal ritorno di Pio IX., 2 vols. (Rome, 1907), of which there is an

## II. Parties and Ministries, 1861–1896

**431. Party Beginnings: the Conservative Ascendancy, 1861–1876.**—In Italy, as in France, political parties are numerous and their constituencies and programmes are subject to rapid and bewildering fluctuation. In the earliest days of the kingdom party lines were not sharply drawn. In the parliament elected in January, 1861, the supporters of Cavour numbered 407, while the strength of the opposition was but 36. After the death of Cavour, however, June 6, 1861, the cleavage which already had begun to mark off the Radicals, or Left, from the Conservatives, or Right, was accentuated, and the Left grew rapidly in numbers and in influence. During the period between 1861 and 1870 the two parties differed principally upon the question of the completion of Italian unity, the Conservatives favoring a policy of caution and delay, the Radicals urging that the issue be forced at the earliest opportunity. With the exception of brief intervals in 1862 and 1867, when the Radicals, under Rattazzi, gained the upper hand, the government during the period indicated was administered by the Conservative ministries of Ricasoli (the successor of Cavour), Minghetti, La Marmora, Menabrea, and Lanza. Each of the Rattazzi ministries had as one of its principal incidents an invasion of the papal territory by Garibaldi, and each fell primarily because of the fear of the nation that its continuance in power would mean war with France. The unification of the peninsula was left to be accomplished by the Conservatives.

After 1870 the dominance of the Conservatives was prolonged to 1876. The Lanza government, whose most distinguished member was the finance minister Sella, lasted until July 10, 1873, and the second ministry of Minghetti, given distinction by the able foreign minister Visconti-Venosta, filled out the period to March 18, 1876. Upon these two ministries devolved the enormous task of organizing more fully the governmental system of the kingdom, and especially of bringing order out of chaos in the national finances. The work was effectively performed, but when it had been completed the nation was more than ready to drive the Conservatives from office. The Conservative administration had been honest and efficient, but it had been rigid and at times harsh. It had set itself squarely against the democ-

abridged translation by H. Zimmern, The Last Days of Papal Rome, 1850–1870 (Boston, 1909). Mention may be made of M. Pernot, La politique de Pie X (Paris, 1910); A. Brunialto, Lo stato e la chiesa in Italia (Turin, 1892); G. Barzellotti, L'Italia e il papato, in *Nuova Antologia*, March 1, 1904; and F. Nielsen The History of the Papacy in the Nineteenth Century (London, 1906).

racy of Garibaldi, Crispi, and Depretis; it had sought to retain the important offices of state in the hands of its own immediate adherents; and in the execution of its fiscal measures it had been exacting, and even ruthless. March 18, 1876, the Minghetti government found itself lacking a majority in the Chamber, whereupon it retired and was replaced by a Radical ministry under the premiership of Depretis, successor of Rattazzi in the leadership of the Left. A national election which followed, in November, yielded the new Government the overwhelming parliamentary majority of 421 to 87.

**432. The Rule of the Radicals, 1876–1896.**—Prior to their accession to power the Radical leaders had criticized so sharply the fiscal and administrative policies of their opponents that they were expected by many persons to overturn completely the existing order of the state. As all but invariably happens under such circumstances, however, when the "outs" became the "ins" their point of view, and consequently their purposes, underwent a remarkable transformation. In almost every essential the policies, and even the methods, of the Conservatives were perpetuated, and the importance of the political overturn of 1876 arises, not from any shift which took place from one style of government to another, but from its effects upon the composition and alignment of the parties themselves. During its fifteen-year ascendancy the Right had exhibited again and again a glaring lack of coherence; yet its unity was in reality considerably more substantial than was that of the Left. So long as the Radicals occupied the position of opponents of the Government they were able, indeed, to present a seemingly solid front. But when it fell to them to organize ministries, to frame and enact measures, and to conduct the administration, the fact appeared instantly that they had neither a constructive programme nor a unified leadership. The upshot was that upon its advent to power the Left promptly fell apart into the several groups of which it was composed, and never thereafter was there substantial co-operation among these groups, save at rare intervals when co-operation was necessary to prevent the return to office of the Conservatives.

**433. The Depretis Ministries, 1876–1887.**—That portion of the party which first acquired ascendancy was the more moderate, under the leadership of Depretis. Its programme may be said to have embraced the extension of the franchise, the enforcement of the rights of the state in relation to the Church, the incompatibility of a parliamentary mandate with the holding of public office, the maintenance of the military and naval policy instituted by the Conservatives, and, eventually, fiscal reform, though the amelioration of taxation was

given no such prominence as the nation had been led to expect. Save for the brief intervals occupied by the two Cairoli ministries of 1878 and 1879–1881, Depretis continued in the office of premier from 1876 until his death, in the summer of 1887. Again and again during this period the personnel of the ministry was changed. Ministers who made themselves unpopular were replaced by new ones,[1] and so complete became the lack of dividing principles between the parties that in 1883 there was established a Depretis cabinet which represented a coalition of the moderate Left and the Right.[2] The coalition, however, proved ill-advised, and when, July 27, 1887, Depretis died he left behind him a government which represented rather a fusion of the moderate and radical wings of the Left. By reason of the disintegrated condition of parties Depretis had been able to override habitually the fundamental principles of parliamentarism and to maintain through many years a government which lived from hand to mouth on petty manœuvers. The franchise, it is true, had been broadened by the law of 1882, and some of the more odious taxes, e. g., the much complained of grist tax, had been abolished. But electoral corruption had been condoned, if not encouraged; the civil service had been degraded to a mere machine of the ministerial majority; and the nation had been led to embark upon highly questionable policies of colonial expansion, alliance with Germany and Austria, and protective tariffs.

**434. The First Crispi, First Rudini, and First Giolitti Ministries, 1887–1893.**—The successor of Depretis was Crispi, in reality the only man of first-rate statesmanship in the ranks of the Left. To him it fell to tide the nation safely over the crises attendant upon the death (January 9, 1878) of King Victor Emmanuel II. and that (February 7 following) of Pope Pius IX. The personality of Crispi was very much more forceful than was that of Depretis and the grasp which he secured upon the political situation rendered his position little short of that of a dictator. The elections of 1876 had reduced to impotence the old Right as a party of opposition, and although prior to Crispi's ministry there had been some recovery, the Left continued in all but uncontested power. In the elections of November, 1890, the Government was accorded an overwhelming majority. None the less, largely by reason of his uncontrollable temper, Crispi allowed himself, at the end

[1] This partial renewal of a ministry, known in Italy as a *rimpasto*, was, and still is, rendered easy by the average ministry's lack of political solidarity.

[2] This coalition policy—the so-called *transformismo*—did not originate with Depretis. As early as 1873 a portion of the Right under Minghetti, by joining the Left, had overturned the Lanza-Sella cabinet; and in 1876 Minghetti himself had fallen a victim to a similar defection of Conservative deputies.

of January, 1891, to be forced by the Conservatives into a position such that the only course open to him was to resign.

There followed a transitional period during which the chaos of party groups was made more than ever apparent. The Rudini ministry, composed of representatives of both the Right and the Left, survived little more than a year. May 5, 1892, the formation of a ministry was intrusted by King Humbert to Giolitti, a Piedmontese deputy and at one time minister of finance in the Crispi cabinet. The product was a ministry supported by the groups of the Centre and the Left, but opposed by those of the Right and of the Extreme Left. Parliament was dissolved and during the ensuing November were held national elections in which, by exercise of the grossest sort of official pressure, the Government was able to win a substantial victory. The period covered by Giolitti's ministry—marked by a cringing foreign policy, an almost utter breakdown of the national finances, and the scandals of 1893 in connection with the management of state banks, especially the Banca Romana—may well be regarded as the most unfortunate in Italian history since the completion of national unity. The revelations made, November 23, 1893, by a committee appointed by Parliament to investigate the bank scandals were of such a character that the Giolitti ministry retired from office, November 24, without so much as challenging a vote of confidence. After prolonged delay a new ministry was made up, December 10, by Crispi, whose return to power was dictated by the conviction of the nation that no one else was qualified to deal with a situation so desperate.

**435. The Second Crispi Ministry, 1893–1896.**—The second Crispi ministry extended from December, 1893, to March, 1896. Politically, the period was one of extreme unsettlement. Supported by the Centre and the Left, substantially as Giolitti had been, the Government suppressed disorder, effected economies, and entered upon an ambitious attempt at colonial aggrandizement in East Africa. But it was opposed by the Extreme Left, a large portion of the Right, and the adherents of Giolitti, so that its position was always precarious. In December, 1894, Giolitti produced papers purporting to show that Crispi himself had been implicated in the bank irregularities. The effort to bring about the premier's fall failed, although there ensued a veritable war between the cabinet and the chambers, in the course of which even the appearance of parliamentary government was abandoned. In the elections of May, 1895, the Government was victorious, and it was only by reason of public indignation arising from the failure of the Eritrean enterprise that, finally, March 5, 1896, Crispi and his colleagues surrendered office.

## III. The Era of Composite Ministries, 1896–1912

During the period which was terminated by the retirement of Crispi the successive ministries, while occasionally including representatives of more than a single political group, exhibited normally a considerable degree of solidarity. After 1896 there set in, however, an epoch during which the growing multiplicity of parties bore fruit in cabinets of amazingly composite character. In the place of the fairly substantial Conservative and Radical parties of the seventies stood now upwards of half a score of contending factions, some durable, some but transitory. No government could survive a month save by the support of an affiliation of a number of these groups. But such affiliations were, in the nature of things, artificial and provisional, and ministerial stability became what it remains to-day, a thing universally desired but rarely enjoyed.

**436. The Second Rudini and the Pelloux Ministries, 1896–1900.**—To General Ricotti-Magnani was committed, at Crispi's fall in 1896, the task of forming a new ministry. After some delay the premiership was bestowed upon Rudini, now leader of the Right. The new Government, constructed to attract the support of both the Right and the Extreme Left, took as its principal object the elimination of Crispi from the arena of politics. In time its foreign policy was strengthened appreciably by the return of Visconti-Venosta, after twenty years, to the foreign office, but home affairs were administered in a grossly inefficient manner. Bound by a secret understanding with Cavalotti, the leader of the Extreme Left, Rudini was obliged to submit habitually to radical dictation, and the elections of 1899, conducted specifically to crush the adherents of Crispi, threw open yet wider the door of opportunity for the Socialists, the Republicans, and the radical elements generally. The Rudini ministry survived until June 18, 1898, when it was overthrown in consequence of riots occasioned in southern Italy by a rise in the price of bread.

June 29, 1898, a ministry was made up by General Pelloux which was essentially colorless politically and whose immediate programme consisted solely in the passage of a public safety measure originated during the preceding ministry. When, in June, 1900, the Government dissolved parliament and appealed to the country the result was another appreciable increase of power on the part of the radicals. In the new chamber the extremists—Radicals, Republicans, and Socialists—numbered nearly 100, or double their former strength. The Pelloux government forthwith retired, and a Liberal ministry was constituted

(June 24, 1900) under Saracco, president of the Senate. Five weeks later, upon the assassination of King Humbert, occurred the accession of the present sovereign, Victor Emmanuel III.

**437. The Saracco and Zanardelli Ministries, 1900–1903.**—The Saracco ministry, formed as a cabinet of pacification, was overthrown February 7, 1901, in consequence of its hesitating attitude towards a dock strike at Genoa. It was succeeded by a ministry containing Giolitti (in the portfolio of the interior) and presided over by Zanardelli, long a leader of the extremer wing of the Radicals. The members of the new Government were drawn from several groups. Three were of Zanardelli's following, three were adherents of Giolitti, three belonged to the Right, one was a Crispian, and two were Independents. Such was their forced reliance, however, upon the support of the Extreme Left that the formation of this cabinet served as an impetus to a notable advance on the part of the extremer groups, especially the Socialists.

**438. Giolitti, Fortis, and Sonnino, 1903–1909.**—In October, 1903, Premier Zanardelli retired, by reason of ill-health, and the cabinet was reconstituted under Giolitti. Aside from the premier, its most distinguished members were Tittoni, minister of foreign affairs, and Luzzatti, minister of finance. The position of the new Government was insecure, and although the elections of November, 1904, resulted in the return of a substantial ministerial majority, the cabinet, realizing that it really lacked the support of the country, resigned in March, 1905. A new and colorless ministry, that of Fortis, lasted less than a year, i. e., until February 2, 1906. The coalition cabinet of Sonnino proved even less long-lived. The well-known statesmanship of Sonnino, together with the fact that men of ability, such as Luzzatti and Guicciardini, were placed in charge of various portfolios, afforded ground for the hope that there might ensue an increased measure of parliamentary stability. But the hope was vain and, May 17, 1906, the ministry abandoned office. Curiously enough, the much desired stability was realized under a new Giolitti government, composed, as all Italian governments in these days must be, of representatives of a number of political groups. In part by reason of the shrewdness of the premier and his colleagues, in part by reason of sheer circumstance, the Giolitti cabinet maintained steadily its position until December 2, 1909, although, as need hardly be observed, during these three and a half years there were numerous changes in the tenure of individual portfolios.

**439. Second Sonnino and Luzzatti Ministries, 1909–1911.**—Upon the retirement of Giolitti there was constituted a second Sonnino ministry, composed of elements drawn from all of the moderate groups from the Liberal Right to the Democratic Left. The programme which it an-

nounced included electoral reform, the improvement of primary education, measures for the encouragement of agriculture, reorganization of local taxation, reduction of the period of military service to two years, and a multiplicity of other ambitious projects. Scarcely more fortunate, however, was the second Sonnino government than had been the first, and, in the midst of the turmoil attending the debates upon a Shipping Conventions bill, the premier and his colleagues felt themselves forced to retire, March 21, 1910.

Giolitti refused to attempt the formation of another ministry, and the task devolved upon the former minister of finance, Luzzatti. In the new cabinet the premier and one other member represented the Liberal element of the Right; one member represented the Centre; three were adherents of Giolitti; two were Radicals; one was a Socialist; and two professed independence of all groups. Whatever of advantage might be supposed to accrue from a government which was broadly representative could legitimately be expected from this combination; although the composite character of the ministry, it was well enough understood, must of necessity operate to the detriment of the Government's unity and influence. The programme which the Luzzatti ministry announced was no less ambitious than that put forward by its predecessor. Included in it were the establishment of proportional representation, the extension of the suffrage, measures to remedy unemployment and other industrial ills, compulsory insurance for agricultural laborers, resistance to clerical intrigue and the prevention of anti-clerical provocations, and the usual pledge to maintain the Triple Alliance.

**440. Giolitti and the Left, 1911– .**—The life of the Luzzatti government covered barely a twelvemonth. March 29, 1911, Giolitti returned to the premiership, signalizing his restoration to power by avowing in the Chamber a programme of policies which, for the time at least, elicited the support of all of the more important party groups. The composition of the new government differed but slightly from that of the former one, but the fact was undisguised that Giolitti relied for support principally upon the more radical elements of the nation, and that, furthermore, he did so with the full assent of the king. A striking evidence of this was the invitation which was extended the socialist leader Bissolati to assume a post in the ministry. Certain obstacles arose which prevented acceptance of the offered position, but when the Government's programme was being given shape Bissolati was called repeatedly into counsel, and it is understood that the ministry's pronouncement in behalf of universal suffrage and the reduction of military and naval expenditures was inspired immediately by socialist influence. Socialism in Italy, it may be observed, is not entirely anti-monarchical,

as it is in France and Spain; on the contrary, it tends constantly to subordinate political to social questions and ends. Bissolati is himself an exponent of the evolutionary type of socialism, as is Briand in France. The first vote of confidence accorded the Giolitti government was participated in by the Giolitti Liberals, the Democratic Left, the Radicals, and a section of the Socialists—by, in short, a general coalition of the Left. The shift of political gravity toward the Left, of which the vote was symptomatic, is the most fundamental aspect of the political situation in Italy to-day, even as it is in that of France. During more than a generation the grouping of parties and factions has been such as to preclude the formation of a compact and disciplined majority able and willing to grapple with the great social questions which successive ministries have inscribed in their programmes. But it seems not impossible that a working *entente* among the groups of the Left may in time produce the legislative stability requisite for systematic and fruitful legislation.

## IV. Phases of Party Politics

**441. Lack of a Conservative Party: Effects.**—"From the beginning," says an Italian writer, "the constitution of our parties has been determined, not at all by great historical or political considerations, but by considerations of a purely personal nature, and this aspect has been accentuated more and more as we have progressed in constitutional development. The natural conditions surrounding the birth and growth of the new nation did not permit the formation of a true conservative party which could stand in opposition to a liberal party. The liberal party, therefore, occupying the entire field, divided empirically into groups, denominated not less empirically Right and Left, in accordance with simple distinctions of degrees and forms, and perchance also of personal disposition." [1]

The preponderating facts, in short, relative to political parties in Italy are two: (1) the absence of any genuine conservative party such as in virtually every other European state plays a rôle of greater or lesser importance, and (2) the splitting of the liberal forces, which elsewhere are bound to co-operate against the conservatives, into a number of factional groups, dominated largely by factional leaders, and unwilling to unite save in occasional coalitions for momentary advantage. The lack of a genuine conservative party is to be explained largely by the anomalous situation which has existed since 1870 in respect to church and state. Until late years that important element, the clericals, which normally would have constituted, as does its counterpart in

[1] Cardon, Del governo nella monarchia costituzionale, 125.

France, the backbone of a conservative party has persisted in the purely passive policy of abstention from national politics. In the evolution of party groupings it has had no part, and in Parliament it has been totally unrepresented. Until recently all active party groups were essentially "liberal," and rarely did any one of them put forward a programme which served to impart to it any vital distinction from its rivals. Each was little more than a faction, united by personal ties, fluctuating in membership and in leadership, fighting with such means as for the moment appeared dependable for the perquisites of office. Of broadly national political issues there were none, just as indeed there were no truly national parties.

**442. The Groups of the Extreme Left.**—More recently there has begun to be a certain development in the direction of national parties and of stable party programmes. This is coming about primarily through the growth of the Extreme Left, and especially of the Socialists. Although the effects are as yet scarcely perceptible, so that the politics of the country exhibit still all of the changeableness, ineffectiveness, and chaos characteristic of the group system, the development of the *partiti populari* which compose collectively the Extreme Left, i. e., the Republicans, the Radicals, and the Socialists, is an interesting political phenomenon.[1] The Republicans are not numerous or well organized. Quite impotent between 1870 and 1890, they gained no little ground during the struggle against Crispi; but the rise of socialism has weakened them, and the party may now be said to be distinctly in decline. To employ the expressive phrase of the Italians, the Republicans are but *quattro noci in un sacco*, four nuts rattling in a bag. The Radicals are stronger, and their outlook is much more promising. They are monarchists who are dissatisfied with the misgovernment of the older parties, but who distrust socialism. They draw especially from the artisans and lower middle class, and are strongest in Lombardy, Venetia, and Tuscany.

**443. The Rise of Socialism.**—In not a few respects the master fact of Italian politics to-day is the remarkable growth of the Socialist party. The origins of the socialist movement in Italy may be traced to the Congress of Rimini in 1872, but during a considerable period Italian socialism was scarcely distinguishable from Bakuninian anarchism, and it was not before 1890 that the line between the two was drawn with precision. In 1891 was founded the collectivist journal *Critica Sociale*, and in the same year was held the first Italian congress which was distinctively socialist. In 1892 came the final break with the

[1] For an exposition of party conditions during the past decade see A. Labrioli, Storia di dieci anni, 1899–1909 (Milan, 1910).

anarchists, and since this date socialism in Italy has differed in no essential particulars from its counterpart in other countries. Between 1891 and 1893 the new party was allied with the Right, but Crispi's relentless policy of repression in 1894 had the effect of driving gradually the radical groups, Republicans, Radicals, and Socialists, into cooperation, and it is to this period that the origins of the present coalition of the groups of the Extreme Left are to be traced. During the years 1895–1900 the Socialists assumed definitely the position of the advanced wing of a great parliamentary party, with a very definite programme of political and social reform. This "minimum programme," as it was gradually given shape, came to comprise as its most essential features the establishment of universal suffrage for adults of both sexes, the payment of deputies and members of local councils, the enactment of a more humane penal code, the replacing of the standing army by a national militia, improved factory legislation, compulsory insurance against sickness, the reform of laws regulating the relations of landlords and tenants, the nationalization of railways and mines, the extension of compulsory education, the abolition of duties on food, and the enactment of a progressive income tax and succession duty. The widespread dissatisfaction of Italians with the older parties, the practical character of the socialist programme, and the comparatively able leadership of the socialist forces have combined to give socialism an enormous growth within the past fifteen years. In 1895 the party polled 60,000 votes and returned to the Chamber of Deputies 12 members. In 1897 it polled 108,000 votes and returned 16 members. Thereafter the quota of seats carried at successive elections rose as follows: 1900, 33; 1904, 26; 1906, 42; and 1909, 43.

**444. The Catholics and Politics: the Non Expedit.**—Aside from the growth of socialism, the most important development in recent Italian politics has been the changed attitude of the Holy See with respect to the participation of Catholics in political affairs. The term "Catholic" in Italy has a variety of significations. From one point of view it denotes the great mass of the people—97.1 per cent in 1910—who are not Protestants, Greeks, Jews, or adherents of any faith other than the Roman. In another sense it denotes that very much smaller portion of the people who regularly and faithfully observe Catholic precepts of worship. Finally, it denotes also the still smaller body of men who yield the Pope implicit obedience in all matters, civil as well as ecclesiastical, and who, with papal sanction, are beginning to constitute an organized force in politics. After it had become manifest that the Holy See might not hope for assistance from the Catholic powers in the recovery of its temporal possessions and of its accustomed independence, there was

worked out gradually at the Vatican a policy under which pressure was to be brought to bear upon the Italian state from within. This policy comprised abstention from participation in national political life on the part of as many citizens as could be induced to admit the right of the papal government to control their civic conduct. In protest against the alleged usurpations of secular power Pope Pius IX. promulgated, in 1883, the memorable decree *Non Expedit*, by which it was declared "inexpedient" that Catholics should vote at parliamentary elections. Leo XIII. maintained a similar attitude; and in 1895 he went a step further by expressly forbidding what hitherto had been pronounced simply inexpedient.

At no time, before or after Pope Leo's decree of prohibition, was the policy of abstention widely enforced, and very many Catholics, both in and out of Italy, warmly opposed it. The stricture was applied only to parliamentary, not to municipal, elections; yet in the two the percentages of the enfranchised citizens who appeared at the polls continued to be not very unequal, and there is every reason to believe that the meagerness of these percentages has been attributable at all times to the habitual indifference of the Italian electorate rather than to the restraining effects of the papal veto. None the less, in the strongly Catholic province of Bergamo and in some other quarters, the papal regulations, by common admission, have cut deeply into what otherwise would have been the normal parliamentary vote.

**445. Relaxation of the Papal Ban.**—In the elections of 1904 many Catholics who hitherto had abstained from voting joined with the Government's supporters at the polls in an effort to check the growing influence of the more radical political groups, justifying their conduct by the conviction that the combatting of socialism is a fundamental Catholic obligation. Pope Leo XIII. was ready to admit the force of the argument, and in June of the following year there was issued an encyclical which made it the duty of Catholics everywhere, Italy included, to share in the maintenance of social order, and permitted, and even enjoined, that they take part in political contests in defense of social order whenever and wherever it was obviously menaced. At the same time, such participation must be, not indiscriminate, but disciplined. It must be carried on under the direction of the ecclesiastical hierarchy, and with the express approval of the Vatican. Theoretically, and as a general rule, the *Non Expedit* remains. But where the rigid application of the law would open the way for the triumph of the enemies of society and of religion (as, from the papal point of view, socialists inevitably are) the rule, upon request of the bishop and sanction by the Holy See, is to be waived. A corollary

of this new policy is that, under certain circumstances, Catholics may not merely vote but may stand for parliamentary seats. By the encyclical it is prescribed that such candidacies shall be permitted only where absolutely necessary to prevent the election of an avowed adversary of the Church, only where there is a real chance of success, and only with the approbation of the proper hierarchical authorities; and even then the candidate shall seek office not *as* a Catholic, but *although* a Catholic.[1]

The partial lifting of the *Non Expedit* has had two obvious effects. In the first place, it has stimulated considerably the political activities of the Catholics. In the elections of 1906 and 1909 the number of Catholic voters and of Catholic candidates was larger than ever before, and in the Chamber of Deputies the group of clerical members gives promise of attaining some real importance. A second result has been, on the other hand, a quickening of the anti-clerical spirit, with a perceptible strengthening of the radical-republican-socialist *bloc*. By providing the Left with a solidifying issue it may yet prove that the papacy has rendered unwittingly a service to the very elements against whom it has authorized its adherents to wage relentless war.[2]

**446. The Election of 1909.**—In respect to the parliamentary strength of the several party groups the elections of the past decade have produced occasional changes of consequence, but the situation to-day is not widely different from what it was at the opening of the century. In the Chamber elected in 1900 the Extreme Left obtained, in all, 107 seats. In 1904 the total fell to 77. In 1906, however, the Radicals secured 44, the Socialists 42, and the Republicans 23—an aggregate of 109; and following the elections of March 7 and 14, 1909, the quotas were, respectively, 37, 43, and 23, aggregating 103. The falling-off in 1904 is to be explained principally by the activity of the Catholics in the elections of that year, and the recovery in 1906 by the fact that, sobered by their reverses, the Socialists had abandoned in the meantime the extremer phases of their revolutionary propaganda. The elections of 1909 were precipitated by Giolitti's dissolution of the Chamber, February 6, in consequence largely of the dissatisfaction of the nation with the ministry's conciliatory attitude toward Austria-Hungary following the annexation by that power of the territories of Bosnia and Herzegovina. Despite the excitement by which it was preceded, however, the campaign was a listless one. The foreign situation as an issue was soon forgotten, and no preponder-

[1] The idea is expressed in the phrase *cattolici deputati, si, deputati cattolici, no.*

[2] Eufrasio, Il Non Expedit, in *Nuova Antologia*, Sept. 1, 1904.

ating national question rose to assume its place. The Left made the most of the opportunity to increase its parliamentary strength, and the Catholics were more than ever active. The two forces, however, in a measure off-set each other, and the mass of the nation, unreached by either, returned the customary overwhelming Governmental majority. When various electoral contests had been decided the quota of seats retained by each of the party groups in the Chamber was found to be as follows: Radicals, 37; Socialists, 43; Republicans, 23; Catholics, 16; Constitutional Opposition (separated from the Government upon no vital matter of principle), 42; and Ministerialists, or supporters of the Government, 346. These supporters of the Government include men of varied political opinions, but collectively they correspond approximately to the elements which in other countries are apt to be designated Liberals, Progressives, or Moderates.[1]

[1] The political parties of Italy are described briefly in Lowell, Governments and Parties, II., Chap. 4, and at more length in King and Okey, Italy To-day, Chaps. 1–3. Special works of importance upon the subject include M. Minghetti, I partiti politici e la ingerenza loro nella giustizia e nell' amministrazione (2d ed., Bologna, 1881); P. Penciolelli, Le gouvernement parlementaire et la lutte des partis en Italie (Paris, 1911); and S. Sighele, Il nazionalismo e i partiti politici (Milan, 1911). Of value are R. Bonfadini, I partiti parlamentari, in *Nuova Antologia*, Feb. 15, 1894, and A. Torresin, Statistica delle elezioni generali politiche, in *La Riforma Sociale*, Aug. 15, 1900. A useful biography is W. J. Stillman, Francesco Crispi (London, 1899), and an invaluable repository of information is M. Prichard-Agnetti (trans.), The Memoirs of Francesco Crispi, 2 vols. (New York, 1912). On the parties of the Extreme Left the following may profitably be consulted: F. S. Nitti, Il partito radicale (Turin and Rome, 1907); P. Villari, Scritti sulla questione sociale in Italia (Florence, 1902); R. Bonghi, Gli ultimi fatti parlamentari, in *Nuova Antologia*, Jan. 1, 1895; G. Alessio, Partiti e programmi, ibid., Oct. 16, 1900; G. Louis-Jaray, Le socialisme municipal en Italie, in *Annales des Sciences Politiques*, May, 1904; R. Meynadier, Les partis d'extreme gauche et la monarchie en Italie, in *Questions Diplomatiques et Coloniales*, April 1, 1908; F. Magri, Riformisti e rivoluzionari nel partito socialista italiano, in *Rassegna Nazionale*, Nov. 16, 1906, and April 1, 1907; R. Soldi, Le varie correnti nel partito socialista italiano, in *Giornale degli Economisti*, June, 1903. On recent Italian elections see G. Gidel, Les élections générales italiennes de novembre 1904, in *Annales des Sciences Politiques*, Jan., 1905; P. Quentin-Bauchart, Les élections italiennes de mars 1909, ibid., July, 1909.

# PART V.—SWITZERLAND

## CHAPTER XXII

### THE CONSTITUTIONAL SYSTEM—THE CANTONS

#### I. The Confederation and Its Constitutions

Among the governments of contemporary Europe that of the federal republic of Switzerland is unique; and the constitutional experiments which have been, and are being, undertaken by the Swiss people give the nation an importance for the student of politics altogether out of proportion to its size and population. Nowhere in our day have been put to the test in more thoroughgoing fashion the principles of federalism, of a plural executive, of proportional representation, of the initiative and the referendum, and, it may be said, of radical democracy in general. The results attained within a sphere so restricted, and under conditions of race, religion, and historical tradition so unusual, may or may not be accepted as evidence of the universal practicability of these principles. At the least, they are of acknowledged interest.

**447. The Confederation in the Eighteenth Century.**—In the form in which it exists to-day the Swiss Confederation is a product of the middle and later nineteenth century. The origins of it, however, are to be traced to a very much remoter period. Beginning with the alliance of the three forest cantons of Uri, Schwyz, and Unterwalden in 1291,[1] the Confederation was built up through the gradual creation

[1] For an English version of the Perpetual League of 1291 see Vincent, Government in Switzerland, 285–288. The best account in English of the origins of the Confederation is contained in W. D. McCrackan, The Rise of the Swiss Republic (2d ed., New York, 1901). Important are A. Rilliet, Les origines de la confédération suisse (Geneva, 1868); P. Vauchier, Les commencements de la confédération suisse (Lausanne, 1891); W. Oechsli, Die Anfange der schweizerischen Eidgenossenschaft (Zürich, 1891). Of the last-mentioned excellent work there is a French translation, under the title Les origines de la confédération suisse (Bern, 1891). The origins of the Swiss Confederation were described in a scientific manner for the first time in the works of J. E. Kopp: Urkunden zur Geschichte der eidgenössischen Bünde (Leipzig and Berlin, 1835), and Geschichte der eidgenössischen Bünde (Leipzig and Berlin, 1845–1852). The texts of all of the Swiss alliances to 1513 are printed in J. von Ah, Die Bundesbriefe der alten Eidgenossen (Einsiedeln, 1891).

of new cantons, the splitting of old ones, the reorganization of dependent territories, and the development of a federal governmental system, superimposed upon the constitutional arrangements of the affiliated states. In 1789, when the French Directory, at the instigation of Napoleon, took it upon itself to revolutionize Switzerland, the Confederation consisted of thirteen cantons.[1] With it were associated certain *Zugewandte Orte*, or allied districts, some of which eventually were erected into cantons, together with a number of *Gemeine Vogteien*, or subject territories. The Confederation comprised simply a *Staatenbund*, or league of essentially autonomous states. Its only organ of common action was a diet, in which each canton had a right to one vote. Save in matters of a purely advisory nature, the powers of this diet were meager indeed. Of the cantons, some were moderately democratic; others were highly aristocratic. The political institutions of all were, in large measure, such as had survived from the Middle Ages.

**448. The Helvetic Republic.**—The result of the French intervention of 1798 was that, almost instantly, the loosely organized Swiss confederation was converted into a centralized republic, tributary to France, and under a constitution which was substantially a reproduction of the French instrument of 1795. Under the terms of this constitution the territories of the Confederation were split up into twenty-three administrative districts, corresponding in but rare instances to the earlier cantons,[2] a uniform Swiss citizenship was established, a common suffrage was introduced, freedom of speech and of the press was guaranteed, and unity was provided for in the coinage, the postal service, and the penal law. A government of ample powers was set up, with its seat at Lucerne, its organs comprising a Grand Council of deputies elected indirectly in the cantons in proportion to population, a Senate of four delegates from each canton (together with retiring members of the Directory), and an Executive Directory of five mem-

[1] Lucerne joined the alliance in 1332; Zürich in 1351; Glarus and Zug in 1352; Bern in 1353; Freiburg and Solothurn in 1481; Basel and Schaffhausen in 1501; and Appenzell in 1513. "Swiss history is largely the history of the drawing together of bits of each of the Imperial kingdoms (Germany, Italy, and Burgundy) for common defense against a common foe—the Hapsburgs; and, when this family have secured to themselves the permanent possession of the Empire, the Swiss league little by little wins its independence of the Empire, practically in 1499, formally in 1648. Originally a member of the Empire, the Confederation becomes first an ally, then merely a friend." Encyclopedia Britannica, 11th ed., XXVI., 246.

[2] To these districts, however, the name canton was applied; and, indeed, this was the first occasion upon which the name was employed officially in Switzerland.

bers, with whom were associated, for administrative purposes, four appointed heads of departments. The French intervention was ruthless and the governmental order thrust upon the Swiss had no root in national tradition or interest. The episode served, however, to break the shackles of mediævalism and thus to contribute to the eventual establishment of a modernized nationality. July 2, 1802, following a series of grave civil disturbances, the constitution of 1798 was superseded by a new but similar instrument, which was imposed by force despite an adverse popular vote.[1]

**449. The Act of Mediation, 1803.**—Under the circumstances reaction was inevitable, and the triumph of the "federalists" came more speedily than might have been expected. In deference to preponderating sentiment in the territories, Napoleon, February 19, 1803, promulgated the memorable Act of Mediation, whereby he authorized the re-establishment of a political system that was essentially federal.[2] Once again there was set up a loose confederation, under a constitution which, however, provided for a central government that was distinctly more substantial than that which had prevailed prior to 1798. The right, for example, to make war and to conclude treaties, withdrawn entirely from the individual cantons, was conferred specifically upon the federal Diet. To the thirteen original cantons were added six new ones—Aargau, Thurgau, Vaud, Ticino, and the Grisons (St. Gall and Graubünden)—the first four formed from districts which under the old régime had occupied the status of subordinate territory, the last two having been formerly "allied states." In the Diet six cantons (Bern, Zürich, Vaud, Aargau, St. Gall, and Graubünden) which had a population in excess of 100,000 were given each two votes. All others retained a right to but one. The executive authority of the Confederation was vested by turns in the six cantons of Bern, Freiburg, Lucerne, Zürich, Basel and Solothurn, the "directorial" canton being known as the *Vorort*, and its chief magistrate as the *Landammann*, of the Confederation. The principle of centralization was in large part abandoned; but the equality of civil rights which the French had introduced was not allowed by Napoleon to be molested. It may be observed further that by the accession of the newly created cantons, containing large bodies of people who spoke French, Italian, and Romansch, the

[1] McCrackan, Rise of the Swiss Republic, 295–312; A. von Tillier, Geschichte der helvetischen Republik, 3 vols. (Bern, 1843); Muret, L'Invasion de la Suisse en 1798 (Lausanne, 1881–1884); L. Marsauche, La confédération helvétique (Neuchâtel, 1890).

[2] It is in this instrument that the Confederation was for the first time designated officially as "Switzerland."

league ceased to be so predominantly German as theretofore it had been.[1]

**450. The Pact of 1815 and the Revival of Particularism.**—The Act of Mediation, on the whole not unacceptable to the majority of the Swiss people, save in that it had been imposed by a foreign power, continued in operation until 1813. During the decade Switzerland was essentially tributary to France. With the fall of Napoleon the situation was altered, and December 29, 1813, fourteen of the cantons, through their representatives assembled at Zürich, declared the instrument to be no longer in effect. Led by Bern, eight of the older cantons determined upon a return to the system in operation prior to 1798, involving the reduction of the six most recently created cantons to their former inferior status. Inspired by the Tsar Alexander I., however, the majority of the Allies refused to approve this programme, and, after the Congress of Vienna had arranged for the admission to the confederacy of the three allied districts of Valais, Geneva, and Neuchâtel, there was worked out, by the Swiss themselves, a constitution known as the "Federal Pact," which was formally approved by the twenty-two cantons at Zürich, August 7, 1815.[2]

By this instrument the ties which bound the federation together were still further relaxed. The cantons regained almost the measure of independence which they had possessed prior to the French intervention. The Diet was maintained, on the basis now of one vote for each canton, regardless of size or population.[3] It possessed some powers, —for example, that of declaring war or peace, with the consent of three-fourths of the cantons,—but there were virtually no means by which the body could enforce the decrees which it enacted. The executive authority of the Confederation was vested in the governments of the three cantons of Zürich, Lucerne, and Bern, which, it was stipulated, should serve in rotation, each during a period of two years. Practically all of the guarantees of common citizenship, religious toleration, and individual liberty which the French had introduced were rescinded, and during the decade following 1815 the trend in most of the more important cantons was not only particularistic but also

[1] Cambridge Modern History, IX., Chap. 4 (bibliography, pp. 805–807). The best general work on the period 1798–1813 is W. Oechsli, Geschichte der Schweiz im XIX. Jahrhundert (Leipzig, 1903), I.

[2] This statement needs to be qualified by the observation that the half-canton Nidwalden approved the constitution August 30, and only when compelled by force to do so.

[3] Three of the cantons—Unterwalden, Basel, and Appenzell—were divided into half-cantons, each with a government of its own; but each possessed only half a vote in the Diet.

distinctly reactionary. The smaller and poorer ones retained largely their democratic institutions, especially their Landesgemeinden, or primary assemblies, but it was only after 1830, and in some measure under the stimulus of the revolutionary movements of that year, that the majority of the cantonal governments underwent that regeneration in respect to the suffrage and the status of the individual which lay behind the transforming movements of 1848.[1]

**451. Attempted Constitutional Revision: the Sonderbund.**—The period between 1830 and 1848 was marked by not fewer than thirty revisions of cantonal constitutions, all in the direction of broader democracy.[2] The purposes of the liberal leaders of the day, however, extended beyond the democratization of the individual cantons. The thing at which they aimed ultimately was the establishment, through the strengthening of the Confederation, of a more effective nationality. On motion of the canton of Thurgau, a committee was authorized in 1832 to draft a revision of the Pact. The instrument which resulted preserved the federal character of the nation, but provided for a permanent federal executive, a federal court of justice, and the centralization of the customs, postal service, coinage, and military instruction. By a narrow majority this project, in 1833, was defeated. It was too radical to be acceptable to the conservatives, and not sufficiently so to please the advanced liberals.

The obstacles to be overcome—native conservatism, intercantonal jealousy, and ecclesiastical heterogeneity—were tremendous. More than once the Confederation seemed on the point of disruption. In September, 1843, the seven Catholic cantons [3] entered into an alliance, known as the Sonderbund, for the purpose of defending their peculiar interests, and especially of circumventing any reorganization of the confederacy which should involve the lessening of Catholic privilege; and, in December, 1845, this affiliation was converted into an armed league. In July, 1847, the Diet, in session at Bern, decreed the dissolution of the Sonderbund; but the recalcitrant cantons refused to abandon the course upon which they had entered, and it was only after an eighteen-day armed conflict that the obstructive league was suppressed.[4]

[1] B. Van Muyden, La suisse sous le pacte de 1815, 2 vols. (Lausanne and Paris, 1890–1892); A. von Tillier, Geschichte der Eidgenossenschaft während der sogen. Restaurationsepoche, 1814–1830, 3 vols. (Bern and Zürich, 1848–1850); ibid., Geschichte der Eidgenossenschaft während der Zeit des sogeheissenen Fortschritts, 1830–1846, 3 vols. (Bern, 1854–1855).

[2] McCracken, Rise of the Swiss Republic, 325–330.

[3] Lucerne, Uri, Schwyz, Unterwalden, Zug, Freiburg, and the Valais.

[4] A. Stern, Zur Geschichte des Sonderbundes, in *Historische Zeitschrift*, 1879;

**452. The Constitution of 1848 and the Revision of 1874.**—The war was worth while, because the crisis which it precipitated afforded the liberals an opportunity to bring about the adoption of a wholly new constitution. For a time the outlook was darkened by the possibility of foreign intervention, but by the outbreak of the revolution of 1848 at Paris that danger was effectually removed. The upshot was that, through the agency of a committee of fourteen, constituted, in fact, February 17, 1848—one week prior to the overthrow of Louis Philippe—the nationalists proceeded to incorporate freely the reforms they desired in a constitutional *projet*, and this instrument the Diet forthwith revised slightly and placed before the people for acceptance. By a vote of 15½ cantons (with a population of 1,900,000) to 6½ (with a population of 290,000), the new constitution was approved.

The adoption of the constitution of 1848, ensuring a modified revival of the governmental régime of 1798–1803, comprised a distinct victory for the Radical, or Centralist, party. During the two decades which followed this party maintained complete control of the federal government, and in 1872 it brought forward the draft of a new constitution whose centralizing tendencies were still more pronounced. By popular vote this proffered constitution was rejected. Another draft, however, was prepared and, April 19, 1874, by a vote of 14½ cantons against 7½, it was adopted. The popular vote was 340,149 to 198,013. Amended subsequently upon a large number of occasions,[1] the instrument of 1874 is the fundamental law of the Swiss Confederation to-day, although it is essential to observe that it represents only a revision of the constitution of 1848. As a recent writer has said, "the one region on the continent to which the storms of 1848 brought immediate advantage was Switzerland, for to them it owes its transformation into a well-organized federal state." [2]

W. B. Duffield, The War of the Sonderbund, in *English Historical Review*, Oct., 1895; and P. Matter, Le Sonderbund, in *Annales de l'École Libre des Sciences Politiques*, Jan. 15, 1896.

[1] For the methods of constitutional amendment see p. 431.

[2] W. Oechsli, in Cambridge Modern History, XI., 234. A brief survey of the constitutional history of Switzerland from 1848 to 1874 is contained in Chap. 8 of the volume mentioned (bibliography, pp. 914–918). Two excellent works are C. Hilty, Les constitutions fédérales de la confédération suisse; exposé historique (Neuchâtel, 1891), and T. Curti, Geschichte der Schweiz im XIX. Jahrhundert (Neuchâtel, 1902). A fairly satisfactory book is L. Hug and R. Stead, Switzerland (New York, 1889). The text of the constitution may be found in S. Kaiser and J. Strickler, Geschichte und Texte der Bundesverfassungen der schweizerischen Eidgenossenschaft von der helvetischen Staatsumwälzung bis zur Gegenwart (Bern, 1901), and in Lowell, Governments and Parties, II., 405–431. English versions are printed in Dodd, Modern Constitutions, II., 257–290; McCrackan,

## II. The Nation and the States

**453. Dominance of the Federal Principle.**—In its preamble the Swiss constitution proclaims its object to be "to confirm the alliance of the Confederation and to maintain and to promote the unity, strength, and honor of the Swiss nation;" and in its second article it affirms that it is the purpose of the Confederation "to secure the independence of the country against foreign nations, to maintain peace and order within, to protect the liberty and the rights of the confederates, and to foster their common welfare." [1] The use of the term "nation" (which, curiously, nowhere occurs in the constitution of the United States) might seem to imply a considerably larger measure of centralization than in fact exists. For although the effect of the constitution of 1848 was to convert a loosely organized league into a firmly constructed state—to transform, as the Germans would say, a *Staatenbund* into a *Bundesstaat*—the measure of consolidation attained fell, and still falls, somewhat short of that which has been realized in the United States, and even in Germany. There are in the Confederation twenty-two cantons, of which three (Unterwalden, Basel, and Appenzell) have split into half-cantons; so that there are really twenty-five political units, each with its own government, its own laws, and its own political conditions. In territorial extent these cantons vary all the way from 2,773 to 14 square miles, and in popula-

Rise of the Swiss Republic, 373–403; Vincent, Government in Switzerland, 289–332; and Old South Leaflets, General Series, No. 18. The texts of all federal constitutions after 1798 are included in the work of Kaiser and Strickler. A good collection of recent documents is P. Wolf, Die schweizerische Bundesgesetzgebung (2d ed., Basel, 1905–1908). The principal treatises on the Swiss constitutional system are J. J. Blumer, Handbuch des schweizerischen Bundesstaatsrechtes (2d ed., Schaffhausen, 1877–1887); J. Schollenberger, Bundesverfassung der schweizerischen Eidgenossenschaft (Berlin, 1905); ibid., Das Bundesstaatsrecht der Schweiz Geschichte und System (Berlin, 1902); and W. Burckhardt, Kommentar der Schweiz; Bundeverfassung vom 29 Mai 1874 (Bern, 1905). Two excellent briefer treatises are N. Droz, Instruction civique (Lausanne, 1884) and A. von Orelli, Das Staatsrecht der schweizerischen Eidgenossenschaft (Freiburg, 1885), in Marquardsen's Handbuch. The best treatise in English upon the Swiss governmental system is J. M. Vincent, Government in Switzerland (New York, 1900). Older works include B. Moses, The Federal Government of Switzerland (Oakland, 1889); F. Adams and C. Cunningham, The Swiss Confederation (London, 1889); and B. Winchester, The Swiss Republic (Philadelphia, 1891). Mention should be made of A. B. Hart, Introduction to the Study of Federal Government (Boston, 1891); also of an exposition of Swiss federalism in Dicey, Law of the Constitution, 7th ed., 517–529.

[1] Dodd, Modern Constitutions, II., 257.

tion, from 642,744 to 13,796;[1] and the primary fact of the Swiss governmental system is the remarkable measure of political independence which these divisions, small as well as large, possess.

**454. The Sovereignty of the Cantons.**—In the United States there was throughout a prolonged period a fundamental difference of opinion relative to the sovereignty of the individual states composing the Union. The Constitution contains no explicit affirmation upon the subject, and views maintained by nationalists and state right's advocates alike have always been determined of necessity by interpretation of history and of public law. In Switzerland, on the contrary, there is, upon the main issue, no room for doubt. "The cantons are sovereign," asserts the constitution, "so far as their sovereignty is not limited by the federal constitution; and, as such, they exercise all the rights which are not delegated to the federal government."[2] As in the United States, the federal government is restricted to the exercise of powers that are delegated, while the federated states are free to exercise any that are not delegated exclusively to the nation, nor prohibited to the states. In the Swiss constitution, however, the delimitation of powers, especially those of a legislative character, is so much more minute than in the American instrument that comparatively little room is left for difference of opinion as to what is and what is not "delegated."[3]

**455. Federal Control of the Cantons.**—After the analogy of the United States, where the nation guarantees to each of the states a republican form of government, the Swiss Confederation guarantees to the cantons their territory, their sovereignty (within the limits fixed by the fundamental law), their constitutions, the liberty and rights of their people, and the privileges and powers which the people have conferred upon those in authority. The cantons are empowered, and indeed required, to call upon the Confederation for the guaranty of their constitutions, and it is stipulated that such guaranty shall be accorded in all instances where it can be shown that the constitution

[1] The total area of the Confederation is approximately 16,000 square miles; the total population, according to the census of December 1, 1910, is 3,741,971.

[2] Art. 3. Dodd, Modern Constitutions, II., 257.

[3] In the form in which it now exists the Swiss constitution is one of the most comprehensive instruments of the kind in existence. Aside from various temporary provisions, it contains, in all, 123 articles, some of considerable length. As is true of the German constitution, there is in it much that ordinarily has no place in the fundamental law of a nation. A curious illustration is afforded by an amendment of 1893 to the effect that "the killing of animals without benumbing before the drawing of blood is forbidden; this provision applies to every method of slaughter and to every species of animals." Art. 25. Dodd, Modern Constitutions, II., 263. The adoption of this amendment was an expression of antisemitic prejudice.

in question contains nothing contrary to the provisions of the federal constitution, that it assures the exercise of political rights according to republican forms, that it has been ratified by the people, and that it may be amended at any time by a majority of the citizens.[1] A cantonal constitution which has not been accorded the assent of the two houses of the federal assembly is inoperative; and the same thing is true of even the minutest amendment. The control of the federal government over the constitutional systems of the states is thus more immediate, if not more effective, than in the United States, where, after a state has been once admitted to the Union, the federal power can reach its constitutional arrangements only through the agency of the courts. Finally, in the event of insurrection the government of the Confederation possesses a right to intervene in the affairs of a canton, with or without a request for such intervention by the constituted cantonal authorities. This right was exercised very effectively upon the occasion of the Ticino disorders of 1889–1890.

Like the American states, but unlike the German, the Swiss cantons enjoy a complete equality of status and of rights. They are forbidden to enter into alliances or treaties of a political nature among themselves, though they are permitted to conclude intercantonal conventions upon legislative, administrative, and judicial subjects, provided such conventions, upon inspection by the federal officials, are found to be devoid of stipulations contrary to the federal constitution or inimical to the rights of any canton. In the event of disputes between cantons, the questions at issue are required to be submitted to the federal government for decision, and the individual canton must refrain absolutely from the use of violence, and even from military preparation.

**456. Powers Vested Exclusively in the Confederation.**—Within the text of the constitution the division of powers between the federal and the cantonal governments is minute, though far from systematic. The clearest conception of the existing arrangements may perhaps be had by observing that provision is made for three principal categories of powers: (1) those that the Confederation has an exclusive right to exercise, some being merely permissive, others obligatory; (2) those which the Confederation is required, or allowed, to exercise in concurrence with the cantons; and (3) those which are not permitted to be exercised at all.

Of powers committed absolutely to the Confederation, the most important are those of declaring war, making peace, and concluding alliances and treaties with foreign powers, especially treaties relating

[1] Arts. 5 and 6. Dodd, Modern Constitutions, II., 258.

to tariffs and commerce.[1] The Confederation is forbidden to maintain a standing army, and no canton, without federal permission, may maintain a force numbering more than three hundred men. None the less, by law of 1907, every male Swiss citizen between the ages of twenty and forty-eight is liable to military service, and the constitution vests not only the sole right of declaring war but also the organization and control of the national forces in the Confederation.[2] The neutralized status with which, by international agreement, Switzerland has been vested renders a war in which the nation should be involved, other, at any rate, than a civil contest, extremely improbable.[3] Within the domain of international relations, the cantons retain the right to conclude treaties with foreign powers respecting border and police relations and the administration of public property. All remaining phases of diplomatic intercourse are confided exclusively to the Confederation. Other functions vested in the federal authorities alone include the control of the postal service and of telegraphs; the coining of money and the maintenance of a monetary system; the issue of bank notes and of other forms of paper money; the fixing of standards of weights and measures; the maintenance of a monopoly of the manufacture and sale of gunpowder; and the enactment of supplementary legislation relating to domicile and citizenship.

**457. Concurrent Powers and Powers Denied the Confederation.**— Among powers which are intrusted to the Confederation, to be exercised in more or less close conjunction with the cantonal governments, are: (1) the making of provision for public education, the cantons maintaining a system of compulsory primary instruction, the Confederation subsidizing educational establishments of higher rank;[4] (2) the regulation of child labor, industrial conditions, emigration, and insurance; (3) the maintenance of highways; (4) the regulation of the press; and (5) the preservation of public order and of peace between members of different religious organizations.

Several explicit prohibitions rest upon the authorities of both Confederation and cantons. No treaties may be concluded whereby it is agreed to furnish troops to other countries. No canton may expel from its own territory one of its citizens, or deprive him of his rights. No person may be compelled to become a member of a religious society, to receive religious instruction, to perform any religious act, or to

[1] Art. 8. Dodd, Modern Constitutions, II., 258.

[2] Arts. 15–23. Ibid., II., 260–262.

[3] McCrackan, Rise of the Swiss Republic, 354–363; Payen, La neutralisation de la Suisse, in *Annales de l'École Libre des Sciences Politiques*, Oct. 15, 1892.

[4] Art. 27. Dodd, Modern Constitutions, II., 263.

incur penalty of any sort by reason of his religious opinions.[1] No death penalty may be pronounced for a political offense. The prohibitions, in short, which the constitution imposes upon federal and cantonal authorities comprise essentially a bill of rights, comparable with any to be found in a contemporary European constitution.

**458. General Aspects.**—The fundamental thing to be observed is that under the Swiss constitution, as under the German, the legislative powers of the federal government are comprehensive, while the executive authority, and especially the executive machinery, is meager. The Confederation has power to legislate upon many subjects—military service, the construction and operation of railroads, education, labor, taxation, monopolies, insurance, commerce, coinage, banking, citizenship, civil rights, bankruptcy, criminal law, and numerous other things. In respect to taxation the federal government possesses less power than does that of Germany, and distinctly less than does that of the United States, for this power is confined to the single field of customs legislation; [2] but in virtually every other direction the legislative competence of the Swiss central authorities is more extended. It is worth observing, furthermore, that the centralizing tendency since 1874 has found expression in a number of constitutional amendments whose effect has been materially to enlarge the domain covered by federal legislation. Among these may be mentioned the amendment of July 11, 1897, granting the Confederation power to enact laws concerning the traffic in food products, that of November 13, 1898, extending the federal legislative power over the domain of civil and criminal law, that of July 5, 1908, conferring upon the Confederation power to enact uniform regulations respecting the arts and trades (thus bringing substantially the entire domain of industrial legislation within the province of the Confederation), and that of October 25, 1908, placing the utilization of water-power under the supervision of the central authorities.

[1] Art. 49. Dodd, Modern Constitutions, II., 271–272.

[2] "The customs system shall be within the control of the Confederation. The Confederation may levy export and import duties." Art. 28. Dodd, Modern Constitutions, II., 263. The constitution stipulates further that imports of materials essential for the manufactures and agriculture of the country, and of necessaries of life in general, shall be taxed as low as possible; also that export taxes shall be kept at a minimum. Art. 42 prescribes that the expenditures of the Confederation shall be met from the income from federal property, the proceeds of the postal and telegraph services, the proceeds of the powder monopoly, half of the gross receipts from the tax on military exemptions levied by the cantons, the proceeds of the federal customs, and, finally, in case of necessity, contributions levied upon the cantons in proportion to their wealth and taxable resources. Dodd, II., 269.

Within the domain of administrative functions, the principle is rather that of committing to the federal agencies a minimum of authority. Beyond the management of foreign relations, the administration of the customs, the postal, and the telegraph services, and of the alcohol and powder monopolies, and the control of the arsenals and of the army when in the field, the federal government exercises directly but inconsiderable executive authority. It is only in relation to the cantonal governments that its powers of an administrative nature are large; and even there they are only supervisory. In a number of highly important matters the constitution leaves to the canton the right to make and enforce law, at the same time committing to the Confederation the right to inspect, and even to enforce, the execution of such measures. Thus it is stipulated that the cantons shall provide for primary instruction which shall be compulsory, non-sectarian, and free; and that "the Confederation shall take the necessary measures against such cantons as do not fulfill these duties." [1] Not only, therefore, does the federal government enforce federal law, through its own officials or through those of the canton; it supervises the enactment and enforcement of measures which the constitution enjoins upon the cantons.[2]

## III. Cantonal Legislation: the Referendum and the Initiative

**459. Variation of Cantonal Institutions.**—In its fundamental features the federal government of Switzerland represents largely an adaptation of the political principles and organs most commonly prevailing within the individual cantons; from which it follows that an understanding of the mechanism of the federation is conditioned upon an acquaintance with that of the canton.[3] Anything, however, in the nature of a description which will apply to the governmental systems of all of the twenty-five cantons and half-cantons is impossible. Variation among them, in both structure and procedure, is at least as common and as wide as among the governments of the American commonwealths. Each canton has its own constitution, and the Confederation is bound to guarantee the maintenance of this instrument regardless of the provisions which it may contain, provided only, as has been pointed out,

[1] Art. 27. Dodd, Modern Constitutions, II., 263.

[2] A. Souriac, L'évolution de la juridiction fédérale en Suisse (Paris, 1909).

[3] On the governments of the cantons the principal general works are J. Schollenberger, Grundriss der Staats- und Verwaltungsrechts der schweizerischen Kantone, 3 vols.(Zürich, 1898–1900), and J. Dubs, Das öffentliche Recht der schweizerischen Eidgenossenschaft (Zürich, 1877–1878), I. Brief accounts will be found in Vincent, the Government of Switzerland, Chaps. 1-12.

that there is in it nothing that is contrary to the federal constitution, that it establishes a republican system of government, and that it has been ratified by the people and may be amended upon demand of a majority. The constitutions of the cantons are amended easily and frequently; but while it may be affirmed that, in consequence of their flexibility, they tend toward more rather than toward less uniformity, the diversity that survives among them still proclaims strikingly their separatist origin and character.

The point at which the governments of the cantons differ most widely is in respect to arrangements for the exercise of the functions of legislation. Taking the nature of the legislative process as a basis of division, there may be said to be two classes of cantonal governments. One comprises those in which the ultimate public powers are vested in a Landesgemeinde, or primary assembly of citizens; the other, those in which such powers have been committed to a body of elected representatives. The second class, as will appear, falls again into two groups, i. e., those in which the employment of the referendum is obligatory and those in which it is merely optional.

**460. The Landesgemeinde.**—Prior to the French intervention of 1798 there were in the Confederation no fewer than eleven cantons whose government was of the Landesgemeinde type. To-day there are but six cantons and half-cantons—those, namely, of Uri, Glarus, the two Unterwaldens, and the two Appenzells. Under varying circumstances, but principally by reason of the increasingly unwieldy character of the Landesgemeinde as population has grown, the rest have gone over to the representative system. All of those in which the institution survives are small in area and are situated in the more sparsely populated mountain districts where conditions of living are primitive and where there is little occasion for governmental elaborateness.[1]

Nominally, the Landesgemeinde is an assembly composed of all male citizens of the canton who have attained their majority. Actually, it is a gathering of those who are able, or disposed, to be present. The assembly meets regularly once a year, in April or May, at a centrally located place within the canton, and usually in an open meadow. When necessity arises, there may be convened a special session. With

[1] The area of Zug is 92 square miles; of Glarus, 267; of the Unterwaldens, 295; of the Appenzells, 162. The longest dimension of any one of these cantons is but thirty miles, and the distance to be traversed by the citizen who wishes to attend the Landesgemeinde of his canton rarely exceeds ten miles. It was once the fashion to represent the Swiss Landesgemeinde as a direct survival of the primitive Germanic popular assembly. For the classic statement of this view see Freeman, Growth of the English Constitution, Chap. 1. There is, however, every reason to believe that between the two institutions there is no historical connection.

the men come ordinarily the women and children, and the occasion partakes of the character of a picturesque, even if solemn and ceremonious, holiday. Under the presidency of the Landammann, or chief executive of the canton, the assembly passes with despatch upon whatsoever proposals may be laid before it by the Landrath, or Greater Council. In the larger assemblies there is no privilege of debate. Measures are simply adopted or rejected. In the smaller gatherings, however, it is still possible to preserve some restricted privilege of discussion. Unless a secret ballot is specifically demanded, voting is by show of hands. Theoretically, any citizen possesses the right to initiate propositions. In practice, however, virtually all measures emanate from the Greater Council, and if the private citizen wishes to bring forward a proposal he will be expected to do so by suggesting it to the Council rather than by introducing it personally in the assembly. The competence of the Landesgemeinde varies somewhat from canton to canton, but in all cases it is very comprehensive. The assembly authorizes the revision of the constitution, enacts all laws, levies direct taxes, grants public privileges, establishes offices, and elects all executive and judicial officials of the canton. Directly or indirectly, it discharges, indeed, all of the fundamental functions of government. It is the sovereign organ of a democracy as thoroughgoing as any the world has ever known.[1]

**461. The Greater Council.**—In every canton, whether or not of the Landesgemeinde type, there is a popularly elected representative body, the Greater Council, which performs a larger or smaller service in the process of legislation. This body is variously known as the Grosser Rath, the Landrath, and the Kantonsrath. In the cantons that maintain the Landesgemeinde the functions of the Greater Council are subsidiary. It chooses minor officials, audits accounts, and passes unimportant ordinances; but its principal business is the preparation of measures for the consideration of the Landesgemeinde. In the cantons, however, in which the Landesgemeinde does not exist, the Greater Council is a more important institution, for there it comprises the only law-making body which is ever brought together at one time or place. Where there exists the obligatory referendum, i. e., where all legislative measures are submitted to a direct popular vote, the decisions of the Council are but provisional. But where the referendum is optional the Council acquires in many matters the substance of final authority.

Members of the Council are elected regularly in districts by direct popular vote. The size of constituencies varies from 188 people in Obwalden and 250 in Inner Appenzell to 1,500 in St. Gall and Zürich

[1] H. D. Lloyd, A Sovereign People (New York, 1907), Chap. 4.

and 2,500 in Bern. The electors include all males who have completed their twentieth year and who are in possession of full civil rights. The term of members varies from one to six years, but is generally three or four. There are, as a rule, two meetings annually, in some cantons a larger number. Beginning with the canton of Ticino in 1891, there has been introduced into the governmental systems of several cantons and of the two cities of Bern and Basel the principle of proportional representation. The details vary, but the general principle is that each political party shall be entitled to seats in the Greater Council in the closest practicable proportion that the party vote bears to the entire vote cast within the canton. Those cantons where this principle is in operation are laid out in districts, each of which is entitled to two or more representatives, and the individual elector, while forbidden to cast more than one vote for a given candidate, casts a number of votes corresponding to the number of seats to be filled.[1]

**462. The Referendum: Origins and Operation.**—The most interesting if not the most characteristic, of Swiss political institutions is the referendum. The origins of the referendum in Switzerland may be traced to a period at least as early as the sixteenth century. The principle was applied first of all in the complicated governments of two territories —the Grisons and the Valais—which have since become cantons but which at the time mentioned were districts merely affiliated with the Confederation. In the later sixteenth century there were traces of the same principle in Bern and in Zürich. And, in truth, the political arrangements of the early Confederation involved the employment of a device which at least closely resembled the referendum. Delegates sent by the cantons to the Diet were commissioned only *ad audiendum et referendum*; that is to say, they were authorized, not to agree finally to proposals, but simply to hear them and to refer them to the cantonal governments for ultimate decision.

In its present form, however, the Swiss referendum originated in the canton of St. Gall in 1830. It is distinctively a nineteenth century creation and is to be regarded as a product of the political philosophy

[1] For an excellent account of the introduction of proportional representation in the canton of Ticino see J. Galland, La démocratie tessinoise et la représentation proportionnelle (Grenoble, 1909). The canton in which the principle has been adopted most recently is St. Gall. In 1893, 1901, and 1906 it was there rejected by the people, but at the referendum of February, 1912, it was approved, and in the following November the cantonal legislature formally adopted it. For a brief exposition of the workings of the system see Vincent, Government in Switzerland, Chap. 4. An important study of the subject is E. Klöti, Die Proportionalwahl in der Schweiz; Geschichte, Darstellung und Kritik (Bern, 1901). On the proposed introduction of proportional representation in the federal government see p. 433.

of Rousseau, the fundamental tenet of which was that laws ought to be enacted, not through representatives, but by the people directly.[1] The principle of the referendum may be applied in two essentially distinct directions, i. e., to constitutions and constitutional amendments and to ordinary laws. The referendum as applied to constitutional instruments exists to-day in every one of the Swiss cantons.[2] It is in no sense, however, peculiar to Switzerland. The same principle obtains in several English-speaking countries, as well as upon occasion elsewhere. The referendum as applied to ordinary laws, on the other hand, is distinctively Swiss. In our own day it is being brought into use in certain of the American commonwealths and elsewhere, but it is Swiss in origin and spirit. Inaugurated in part to supply the need created by a defective system of representation and in part in deference to advanced democratic theory, the referendum for ordinary laws exists to-day in every canton of Switzerland save only that of Freiburg. In some cantons the referendum is obligatory, in others it is "facultative," or optional. Where the referendum is obligatory every legislative measure must be referred to popular vote; where it is optional, a measure is referred only upon demand of a specified number or proportion of voters. A petition calling for a referendum must be presented to the executive council of the canton, as a rule, within thirty days after the enactment of the measure upon which it is proposed that a vote be taken. The number of signers required to make the petition effective varies from 500 in Zug to 6,000 in St. Gall. Likewise, the proportion of voters which is competent to reject a measure is variable. In some cantons a majority of all enfranchised citizens is required; in others, a simple majority of those actually voting upon the proposition in hand. In the event of popular rejection of a measure which the cantonal legislature has passed, the executive council gives the proper notice to the legislature, which thereupon pronounces the measure void.[3]

[1] Lowell, Governments and Parties, II., 243.

[2] It will be observed, of course, that in the cantons which maintain a Landesgemeinde there is no occasion for the employment of the referendum upon either constitutional or legislative questions. The people there act directly and necessarily upon every important proposition.

[3] Important treatises on the Swiss referendum are T. Curti, Geschichte der schweizerischen Volksgesetzgebung (Zürich, 1885); ibid., Die Volksabstimmung in der schweizerischen Gesetzgebung (Zürich, 1886). A French version of the former work, by J. Ronjat, has appeared under the title Le referendum: histoire de la législation populaire en Suisse (Paris, 1905). Of large value is Curti, Die Resultate des schweizerischen Referendums (2d ed., Bern, 1911). An older account is J. A. Herzog, Das Referendum in der Schweiz (Berlin, 1885). An excellent book is S. Duploige, Le referendum en Suisse (Brussels, 1892), of which there is an English translation, by C. P. Trevelyan, under the title The Referendum in Switzerland

**463. The Initiative.**—The complement of the referendum is the initiative. Through the exercise of the one the people may prevent the taking effect of a law or a constitutional amendment to which they object. Through the exercise of the other they may not merely bring desired measures to the attention of the legislature; they may secure the enactment of such measures despite the indifference or opposition of the legislative body. In current political discussion, and in their actual operation, the two are likely to be closely associated. They are, however, quite distinct, as is illustrated by the fact that the earliest adoptions of the initiative in Switzerland occurred in cantons (Vaud in 1845 and Aargau in 1852) in which as yet the referendum did not exist. Among the Swiss cantons the right of popular legislative initiative is now all but universal. It has been established in all of the cantons save Freiburg, Lucerne, and Valais. As a rule, measures may be proposed by the same proportion of voters as is competent to overthrow a measure referred from the legislature; and any measure proposed by the requisite number of voters must be taken under consideration by the legislature within a specified period. If the legislature desires to prepare a counter-project to be submitted to the voters along with the popularly initiated proposition, it may do so. But the original proposal must, in any case, go before the people, accompanied by the legislature's opinion upon it; and their verdict is decisive.[1]

## IV. The Cantonal Executive and Judiciary

**464. The Council of State.**—Executive authority within the canton is vested regularly in an administrative council, variously designated as a Regierungsrath, a Standeskommission, or a Conseil d'Etat. The Council of State (employing this phrase to designate each body of the kind, however named) consists of from five to thirteen members, serving for from one to five years. In more than half of the cantons the members are chosen by popular vote; in the rest, they are elected by the Greater Council, or legislature. By the Council of State (in a few instances by the legislature) is chosen a chairman, or president, known in the German cantons as the Landammann.[2] The office of Landammann is

(London, 1898). Of value also are Stüssi, Referendum und Initiative in den Scheizerkantonen (Zürich, 1894), and J. Signorel, Étude de législation comparée sur le referendum législatif (Paris, 1896). Mention may be made of J. Delpech, Quelques observations à propos du referendum et des Landesgemeinde suisse, in *Revue du Droit Public*, April–June, 1906.

[1] A. Keller, Das Volksinitiativrecht nach den schweizerischen Kantonsverfassungen (Zürich, 1889).

[2] In the Landesgemeinde cantons the Landammann is elected by the primary assembly.

one of dignity and honor, at least locally, but it is not one of large authority. The Landammann is the chief spokesman of the canton, but legally his status is scarcely superior to that of his fellow councillors. The functions of the Council embrace the execution of the laws, the preservation of order, the drawing up of fiscal statements, the drafting of proposed legislation, the rendering of decisions in cases on appeal, and, in general, the safeguarding of the interests of the canton. For purposes of convenience the functions of the Council are divided among departments, to each of which one of the councillors is assigned. All acts, however, are performed in the name of the Council as a whole. In those cantons which have fullfledged legislative chambers councillors may attend sessions and speak, though as a rule they may not vote.

**465. Local Administration.**—For purposes of administration all cantons, save a few of the smaller ones, are divided into districts (187 in the aggregate), at the head of each of which is placed a prefect or Bezirksammann. This official, whether chosen by the Council of State, by the Greater Council, or even by the people of the district, is in every sense a representative of the cantonal government. Sometimes he is assisted by a Bezirksrath, or district council; frequently he is not. In Schwyz there is a Bezirksgemeinde, or popular assembly, in each of the six districts, but this is wholly exceptional.

Each canton is built up of communes, or Gemeinden, and these communes, 3,164 in number, comprise the most deeply rooted political units of the country. Legally, each is composed of all male Swiss citizens over twenty years of age resident within the communal bounds during a period of at least three months. The meeting of these persons is known as the Gemeindeversammlung, or the assemblée générale. By it are chosen an executive council (the Gemeinderath or conseil municipal) and a mayor (Gemeindepräsident). A principle adhered to by the cantonal governments generally is that in the work of local administration the largest possible use shall be made of the mayors of towns, the headmen of villages, and other minor local dignitaries.[1]

**466. Justice.**—Each canton has a judicial system which is essentially complete within itself. Judges are elected by the people. The hierarchy of civil tribunals—the Vermittler, or justice of the peace, the Bezirksgericht, or district court, and the Kantonsgericht—is paralleled by a hierarchy of courts for the trial of criminal cases, a special committee or chamber of the Kantonsgericht serving as the criminal court of last resort. Only in few and wholly exceptional instances may appeal be carried from a cantonal to a federal tribunal.

[1] Vincent, Government in Switzerland, Chap. 10; Adams and Cunningham, The Swiss Confederation, Chap. 8; Lloyd, A Sovereign People, Chap. 3.

## CHAPTER XXIII

### THE FEDERAL GOVERNMENT

#### I. The Executive

**467. The Federal Council: the President.**—At the framing of the Swiss constitution, as at that of the American, there arose the question of a single or a plural executive. In the United States the disadvantages assumed to be inherent in an executive which should consist of a number of persons who were neither individually responsible nor likely to be altogether harmonious determined a decision in favor of a single president. In Switzerland, on the other hand, the cantonal tradition of a collegiate executive, combined with an exaggerated fear of the concentration of power, determined resort to the other alternative. There is a president of the Swiss Confederation. But, as will appear, his status is altogether different from that of the President of the United States, and likewise from that of the President of France. The Swiss executive consists rather of a Bundesrath, or Federal Council, in which the President is little more than chairman.

"The supreme directive and executive authority of the Confederation," says the constitution, "shall be exercised by a Federal Council, composed of seven members."[1] The members of the Federal Council are elected by the Federal Assembly, i. e., the National Council and the Council of the States in joint session, from among all citizens eligible to the National Council, or popular legislative body, with the condition simply that not more than one member may be chosen from the same canton. Nominally, the term of members is three years; practically, it is variable, for whenever the National Council is dissolved prior to the expiration of its triennial period the new Assembly proceeds forthwith to choose a new Federal Council. Two officials, designated respectively as President of the Confederation and Vice-President of the Federal Council, are elected annually by the Assembly from among the seven members of the Council. A retiring president may not be elected president or vice-president for the succeeding year; nor may any member occupy the vice-presidency during two consecutive years. By custom the

[1] Art. 95, Dodd, Modern Constitutions, II., 281.

vice-president regularly succeeds to the presidency. The function of the President, as such, is simply that of presiding over the deliberations of the Council. He has no more power than any one of his six colleagues. Like each of them, he assumes personal direction of some one of the principal executive departments.[1] The only peculiarity of his status is that he performs the ceremonial duties connected with the titular headship of the state and draws a salary of 13,500 francs instead of the 12,000 drawn by each of the other councillors. He is in no sense a "chief executive."

**468. The Executive Departments.**—The business of the Council is divided among the seven departments of Foreign Affairs, Interior, Justice and Police, Military Affairs, Imposts and Finance, Posts and Railways, and Commerce, Industry, and Agriculture. Each department is presided over by a member of the Council, and to each is assigned from time to time, by the President, such subjects for consideration as properly fall within its domain. It is stipulated by the constitution, however, that this distribution shall be made for the purpose only of facilitating the examination and despatch of business. All decisions are required to emanate from the Council as a body.[2] Ordinarily a councillor remains at the head of a department through a considerable number of years,[3] and it may be added that, by reason of an increase in the aggregate volume of governmental business, the departmental head enjoys to-day a larger measure of independence than formerly. A quorum of the Council consists of four members, and no member may absent himself from a session without excuse. Except in elections, voting is *viva voce*, and an abstract of proceedings is published regularly in the official gazette of the Republic.

**469. Actual Character of the Council.** The Federal Council, although at certain points resembling a cabinet, is not a cabinet, and no such thing as cabinet government, or a parliamentary system, can be said to exist in Switzerland. The Council does, it is true, prepare measures and lay them before the Assembly. Its members even appear on the floor of the two chambers and defend these measures. But the councillors are not, and may not be, members of the Assembly; they do not, of necessity, represent a common political party, faith, or programme, they are not necessarily agreed among themselves upon the merits or

[1] No longer, as prior to 1888, necessarily that of foreign affairs.

[2] Art. 103. Dodd, Modern Constitutions, II., 284. For a synopsis of the law of July 8, 1887, whereby an apportionment of functions was made among the various departments see Dupriez, Les Ministres, II., 239–246.

[3] Members of the Council are re-elected, almost as a matter of course, as long as they are willing to serve. Between 1848 and 1893 the average period of service exceeded ten years. Lowell, Governments and Parties, II., 203.

demerits of a particular legislative proposal; and if overruled by a majority of the Assembly they do not so much as think of retiring from office, for each member has been elected by a separate ballot for a fixed term.[1] In other words, the Council is essentially what Swiss writers have themselves denominated it, i. e., an executive committee of the Federal Assembly. It possesses a large measure of solidarity, but only for the purposes of routine business. Quite superior to it in every way—so much so that even its most ordinary administrative measures may be set aside—is the Assembly, as against which the Council possesses not a shred of constitutional prerogative. In the Assembly is vested ultimate authority, and in the event of a clash of policies what the Assembly orders the Council performs. Between the executive and the legislative branches of the government the relation is quite as close as it is in a parliamentary system, but the relation is of a totally different sort.[2]

**470. The Council's Functions.**—The functions of the Council are at the same time executive, legislative, and judicial. On the executive side it is the duty of the body to "execute the laws and resolutions of the Confederation and the judgments of the Federal Court"; to watch over the external interests of the Confederation and to conduct foreign relations; to safeguard the welfare, external and internal, of the state; to make such appointments as are not intrusted to any other agency; to administer the finances of the Confederation, introduce the budget, and submit accounts of receipts and expenses; to supervise the conduct of all officers and employees of the Confederation; to enforce the observance of the federal constitution and the guaranty of the cantonal constitutions; and to manage the federal military establishment. In respect to legislation it is made the duty of the Council to introduce bills or resolutions into the Federal Assembly and to give its opinion upon the proposals submitted to it by the chambers or by the cantons; also to submit to the Assembly at each regular session an account of its own administration, together with a report upon the internal conditions and the foreign relations of the state.[3] The Council possesses no veto upon the Assembly's measures. The judicial functions of the Council are such as arise from the fact that there are in Switzerland

[1] The resignation, in 1891, of M. Welti, a member of the Council since 1867, by reason of the fact that the people rejected his project for the governmental purchase of railway shares occasioned general consternation.

[2] For interesting observations upon the advantages and disadvantages of the Swiss system see Lowell, Governments and Parties, II., 204–208. See also Vincent, Government in Switzerland, Chap. 16; Dupriez, Les Ministres, II., 188–203.

[3] Art. 102. Dodd, Modern Constitutions, II., 282–284; Dupriez, Les Ministres, II., 218–225.

no administrative courts, so that the varied kinds of administrative cases which have been withheld from the jurisdiction of the Federal Tribunal are in practice dealt with directly by the Federal Council, with appeal, as a rule, to the Assembly.[1]

## II. Legislation: the Federal Assembly

With specific reservation of the sovereign rights of the people and of the cantons, the constitution vests the exercise of the supreme authority of the Confederation in the Bundesversammlung, or Federal Assembly. Unlike the cantonal legislatures, the Federal Assembly consists of two houses—a Nationalrath, or National Council, and a Ständerath, or Council of the States.[2] The one comprises essentially a house of representatives; the other, a senate. The adoption, in the constitution of 1848, of the hitherto untried bicameral principle came about as a compromise between conflicting demands of the same sort that were voiced in the Philadelphia convention of 1787—the demand, that is, of the smaller federated units for an equality of political power and that of the larger ones for a proportioning of such power to population.

**471. The National Council: Composition and Organization.**—The National Council is composed of deputies chosen at a general election, for a term of three years, by direct manhood suffrage. The constitution stipulates that there shall be one representative for every 20,000 inhabitants, or major fraction thereof, and a reapportionment is made consequent upon each decennial census. The electoral districts are so laid out that no one comprises portions of different cantons; but they are of varying sizes and are entitled to unequal numbers of representatives, according to their population. Within the district all representatives, if there are more than one, are chosen on a general ticket, and the individual elector has a right to vote for a number of candidates equal to the number of seats to be filled. The quota of representatives falling to the various cantons under this arrangement varies from one in Uri and in Zug to twenty-two in Zürich and twenty-nine in Bern. Every canton and each of the six half-cantons is entitled to at least one deputy. The total number in 1911 was 189. The

[1] Art. 113. Dodd, Modern Constitutions, II., 286. The nature and functions of the Swiss executive are treated briefly in Vincent, Government in Switzerland, Chap. 17, and Adams and Cunningham, The Swiss Confederation, Chap. 4. An excellent account is that in Dupriez, Les Ministres, II., 182–246. Of value are Blumer and Morel, Handbuch des schweizerischen Bundesstaatsrechts, III., 34–92, and Dubs, Le droit public de la confédération suisse, II., 77–105.

[2] In French, the Conseil National and the Conseil des États.

electorate consists of all male Swiss who have attained their twentieth year and who are in possession of the franchise within their respective cantons. The establishment of electoral districts, as well as the regulation of the conduct of federal elections, has been accomplished, under provision of the constitution, by federal statute. Voting is in all cases by secret ballot, and elections take place always on the same day (the last Sunday in October) throughout the entire country. An absolute majority of the votes cast is necessary for election, save that, following two unsuccessful attempts to procure such a majority within a district, at the third trial a simple plurality is sufficient. Except that no member of the clergy may be chosen, every citizen in possession of the federal franchise is eligible to a seat in the National Council.[1] Members receive a small salary, which is proportioned to days of actual attendance and paid out of the federal treasury.

At each regular or extraordinary session the National Council chooses from among its members a president, a vice-president, and four tellers, under the provision, however, that a member who during a regular session has held the office of president is ineligible either as president or vice-president at the ensuing regular session, and that the same member may not be vice-president during two consecutive regular sessions. In all elections within the National Council the president participates as any other member; in legislative matters he possesses a vote only in the event of a tie. The president, vice-president, and tellers together comprise the "bureau" of the Council, by which most of the committees are nominated, votes are counted, and routine business is transacted.[2]

**472. The Council of the States: Composition and Status.**— Superficially, the Swiss Council of the States resembles the American Senate, and it is commonly understood that the framers of the constitution of 1848 created the institution not merely by reason of an inevitable tendency to perpetuate in some measure the purely federal features of the old Diet, but also in consequence of a deliberate purpose to set up a legislative body which should fulfill essentially those complementary and restraining functions which in the United States were assigned to the upper chamber. In point of fact, however, the Swiss Council has little in common with its American counterpart. It consists of forty-four members, two chosen within each canton; and to this extent it indeed resembles the Senate. The manner of election and the qualifications of members, however, as well as tenure of office and the arrangements made for remuneration, are not regulated, as

[1] This denial of clerical eligibility was inspired by fear of Catholic influences.

[2] Arts. 72–79. Dodd, Modern Constitutions, II., 277–278.

are similar matters in the United States, by the constitution, or by federal authority, but, on the contrary, are left entirely to be determined by the individual cantons. The consequence is a total lack of uniformity in these highly important matters. In some cantons members are elected by popular vote; in others, by the legislative assembly. In some they are chosen for one year; in others, for two; in still others, for three. The consequence is that the Council is commonly lacking in compactness and morale. More serious still is the fact that the functions of the upper chamber are in all respects identical with those of the lower. The American Senate has power and character of its own, quite apart from that of the House of Representatives; the Swiss Council has nothing of the kind. Its organization, even, is an almost exact replica of that of the lower chamber.[1] In the earlier days of the present constitutional system the Council enjoyed high prestige and influence; but by reason of the conditions that have been described the body in time fell into decline. Able and ambitious statesmen have preferred usually to be identified with the lower house. The upper chamber possesses large powers—powers nominally co-ordinate with those of the lower one—and it has acted not infrequently with sufficient independence to defeat measures advocated by the National Council. But, without being the feeble upper chamber that is commonly associated with a parliamentary system of government, it is yet essentially lacking in the initiative and independence of a true senate.[2]

**473. Powers of the National Assembly.**— In the constitution it is stipulated that the National Council and the Council of the States shall have the right to consider all subjects placed within the competence of the Confederation and not assigned to any other federal authority.[3] The range of this competence is enormous. There are, in the first place, certain functions which the two houses perform while sitting jointly under the direction of the president of the National Council. These are electoral and judicial in character and comprise (1) the election of the Federal Council, or executive committee of the Confederation, the federal judges, the chancellor,[4] and the generals

[1] "Neither the president nor the vice-president may be chosen at any session from the canton from which the president for the preceding session was chosen; and the vice-presidency may not be held during two successive regular sessions by representatives of the same canton." Art. 82.

[2] Arts. 80–83. Dodd, Modern Constitutions, II., 278.

[3] Art. 84. Ibid., II., 278.

[4] The principal duty of the chancellor is the keeping of the minutes of the National Council. A vice-chancellor, appointed by the Federal Council, performs a similar function in the Council of States, under responsibility to the chancellor.

of the federal army; (2) the granting of pardons; and (3) the adjustment of jurisdictional conflicts between different branches of the federal governmental system.

Much more extensive are the powers which the houses, sitting separately, exercise concurrently. The constitution requires that the councils be assembled at least once annually. In practice, they meet in June and December of each year, regular sessions extending as a rule through four or five weeks. At the request of either one-fourth of the members of the National Council or of five cantons an extraordinary session must be held, and there is a probability of one such session each year, ordinarily in March. The powers assigned the chambers to be exercised in their concurrent capacities may be classified variously. The more important are: (1) the enactment of laws and ordinances upon the organization and election of federal authorities and upon all subjects which by the constitution are placed within the federal competence; (2) the conduct of foreign relations, particularly the concluding of treaties and alliances with foreign powers, the supervision of conventions entered into by the cantons (in the event that the Federal Council, or any canton, protests against such cantonal arrangements), the declaring of war and the concluding of peace, and the taking of measures for the safety, independence, and neutrality of the Confederation; (3) the control of the federal army; (4) the adoption of the annual budget, the authorizing of federal loans, and the auditing of public accounts; (5) the taking of measures for the enforcement of the provisions of the federal constitution, for the carrying out of the guaranty of the cantonal constitutions, for the fulfillment of federal obligations, and for the supervision of the federal administration and of the federal courts; and (6) the revision of the federal constitution.[1] It will be perceived that the powers exercised by the chambers are principally legislative, but also in no small degree executive and judicial; that, as has already been emphasized, the two councils comprise the real directive agency of the Confederation.

**474. The Assembly's Procedure.**—Federal laws, decrees, and resolutions are passed only by agreement of the two councils. Any measure may originate in either house and may be introduced by any member. There are committees upon various subjects, but bills are referred to them only by special vote. Committee members are chosen by the chamber directly or by the chamber's "bureau," as the chamber itself may determine. In each house a majority constitutes a quorum for the transaction of business, and measures are passed by

[1] Art. 85, §§ 1–14. Dodd, Modern Constitutions, II., 278–279.

a simple majority. Sittings, as a rule, are public. It is expressly forbidden that members shall receive from their constituents, or from the cantonal governments, instructions respecting the manner in which they shall vote.[1]

### III. Legislation: the Referendum and the Initiative

From the domain of cantonal legislative procedure there has been carried over into federal law-making the fundamental principle of the referendum. The federal referendum exists to-day in two forms, i. e., the optional and the obligatory. The one appeared for the first time in the revised constitution of 1874 and is applicable exclusively to projects of ordinary legislation. The other was established by the constitution of 1848 and is applicable solely to proposed amendments of that instrument.

**475. The Optional Referendum: Laws and Resolutions.**—After a law which has been enacted by the Federal Assembly has been published it enters regularly upon a probationary period of ninety days during which, under stipulated conditions, it may be referred directly to the people for ratification or rejection. The only exceptions are afforded by those measures which, by declaration of the councils, are of a private rather than a general character, and those which are "urgent." Such acts take effect at once. But all others are suspended until there shall have been adequate opportunity for the carrying through of a referendum. At any time within the ninety-day period a referendum may be demanded, either by the people directly or by the cantonal governments. Petitions signed by as many as 30,000 voters, or adopted by the legislatures of as many as eight cantons, render it obligatory upon the Federal Council to arrange for the submission of a measure to a referendum within four weeks after the announcement of the demand has been made. The method of the referendum is carefully prescribed by federal legislation. Every citizen in possession of unimpaired civil rights is entitled to vote, and the voting takes place under the supervision of the authorities of the commune and of the canton. If in a majority of the cantons a preponderance of votes is cast in favor of the measure in hand, the Federal Council proclaims the fact and the measure goes at once into operation. An adverse majority, on the other hand, renders the measure null. In the event that no referendum is demanded, the measure, of course, goes automatically into effect at the expira-

[1] For a brief account of the procedure of the chambers see Vincent, Government in Switzerland, 181–187.

tion of the ninety-day period. Since its introduction into the federal constitution the principle of the legislative referendum has been brought to bear upon a not inconsiderable number of legislative projects. The proportion, indeed, of laws falling within the range of the system which have been subjected to the popular vote, while varying widely from time to time, has been not far from ten per cent, and of the measures actually voted upon several of importance have been rejected. In all instances the demand has arisen directly from citizen petitioners, not from the cantonal governments.[1]

**476. The Obligatory Referendum: Constitutional Amendments.**— In its application to laws and resolutions the referendum is optional; in application to constitutional amendments it is obligatory. Revision of the Swiss constitution may be accomplished at any time, in whole or in part, and in a variety of modes. In the event that the legislative councils are able to agree upon a scheme of revision they vote the adoption of the proposed amendment precisely as if it were an ordinary statute, and it is thereupon submitted to the people for acceptance or rejection. If, however, the two houses disagree upon the question of a total revision, or if as many as 50,000 voters make demand for a total revision, there must be put to the people the preliminary question as to whether there shall be a revision at all. If the will of the majority is affirmative, new legislative councils must be elected, and to them falls the obligation of executing the popular mandate.

When the question is one of but partial revision the procedure is somewhat different. Partial revision may be instituted either by the councils or by petition of 50,000 voters. When a popular petition is presented there are four possible courses of action: (1) if the project is presented in general terms and the councils are in agreement upon it, they reduce the proposal to specific form and submit it to the

[1] On the operation of the optional referendum see Lowell, Governments and Parties, II., 252–261. "From 1874 till 1908 the Federal Assembly passed 261 bills and resolutions which could constitutionally be subjected to the referendum. Thirty of these 261 were actually voted on by the people, who ratified eleven and rejected nineteen of them. The effect of the federal optional legislative referendum was, then, to hold up a little more than seven per cent of the statutory output of the Federal Assembly." W. E. Rappard, in *American Political Science Review*, Aug., 1912, 357. On the most recent exercise of the federal referendum (the adoption, February 4, 1912, of a national Accident and Sickness Insurance bill) see M. Turmann, Le referendum suisse du 4 février—la loi fédérale sur l'assurance-maladie et l'assurance accident, in *Le Correspondant*, Feb. 10, 1912. This particular referendum was called for by 75,000 voters. The measure submitted was approved by a vote of 287,566 to 241,416, on a poll of 63.04 per cent of the registered electorate.

people; (2) if the councils are not in agreement upon the project they put to the people the preliminary question of whether an amendment of the general type proposed is desirable, and if the vote is affirmative they proceed with the revision; (3) if the petition is presented in a form that is specific and final and the councils are in agreement upon it, the project is submitted forthwith to the people; and (4) if the councils are not in agreement upon a specific project so advanced, they may prepare a project of their own, or recommend the rejection of the proposed amendment, and they may submit their counter-project or their recommendation at the same time that the initiative petition is presented to the people.[1] In no case may an amendment be put into effect until it has received the assent of a majority of those voting thereon in a majority of the cantons. Of seventeen constitutional amendments submitted by the Federal Assembly between 1874 and 1908 twelve were ratified and five were rejected.

**477. The Popular Initiative.**—The right of popular initiative in the revision of the constitution was established by an amendment of July 5, 1891, through the united efforts of all the anti-Radical parties and groups. The purpose underlying the amendment was to break the monopoly long enjoyed by the Radicals by placing within the hands of any fifty thousand citizens the power to compel the federal government to take under consideration proposed modifications of the constitution, to prepare projects relating to them, and to submit these projects to the ultimate decision of the people. When the system was established many persons seriously feared that the way had been thrown open for frequent, needless, and revolutionary change, by which the stability of the state would be impaired. Such apprehension, however, has been proved groundless. During a score of years only nine popularly-initiated amendments have been voted upon, and only three have been incorporated in the fundamental law. One of the three, adopted in 1893, prohibited the Jewish method of slaughtering animals, and was purely a product of the antisemitic movement. The other two were adopted in 1908. One authorized for the first time legislation by the federal authorities upon subjects relating to the trades and professions; the other prohibited the manufacture and sale of absinthe. A number of other more or less sweeping amendments, it is true, have been proposed, but all alike have failed of adoption. Thus, in 1894, perished a socialistic scheme whereby the state was to obligate itself to provide employment for every able-bodied man, and in the same year, a project to pay over to the cantons a bonus of two francs per capita from the rapidly increasing returns

[1] Arts. 118–123. Dodd, Modern Constitutions, II., 287–289.

of the customs duties.[1] Similarly, in 1900, failed two interesting projected reforms relating to the federal electoral system. One of these provided for the introduction, in the various cantons, of the principle of proportional representation in the election of members of the National Council. The other provided for the election of the members of the Federal Council, not, as at present, by the General Assembly, but by direct popular vote, the whole mass of electors voting, not by cantons, but as one national constituency. In June, 1900, both of these electoral proposals were rejected by the legislative chambers, and in the ensuing November the people ratified the rejection. In 1903, there was defeated in the same way a proposal to base representation in the National Council, not upon the total population of the country, but upon the Swiss population alone. In 1909-10 the proportional representation project was revived, but with a negative result.[2]

Among reforms that have been much discussed in recent years has been the extension of the initiative and of the obligatory referendum to all federal legislation. Both apply as yet only to constitutional amendments. In 1906 the Federal Council went so far as to submit to the legislative councils a proposal intended to meet the first of these ends. The purport of the proposal was that fifty thousand voters,

[1] C. Borgeaud, Le plébiscite du 4 novembre 1894, in *Revue du Droit Public*, Nov.–Dec., 1894. The adverse votes were decisive, i. e., 308,289 to 75,880 and 347,401 to 145,362 respectively.

[2] The introduction of proportional representation in Switzerland is advocated especially by the Socialists and the Clericals, to whom principally would accrue the benefits of the system. The Liberals are favorable to the principle, though they prefer to postpone the issue. The Radicals are solidly opposed. At the referendum of 1900 the project was rejected by 11½ to 10½ cantons, and by a popular majority of 75,000; at that of October 23,1910, it was approved by 12 to 10 cantons, but was rejected popularly by a majority of less than 25,000 (265,194 negative, 240,305 affirmative). Rather curiously, the defeat arose largely from the defection of the Catholic canton of Freiburg, which in 1900 was favorable by a vote of 13,000 to 3,800. The canton's vote in 1910 was for rejection, by 11,200 to 3,900. By those best acquainted with the situation this astonishing reversal is explained by the influence which is exercised in the canton to-day by M. Python, a dictator who opposes any innovation whereby his own controlling position would be menaced. Not unnaturally, the friends of the project (and in 1910 all parties save the Radicals gave it their support) regard the outcome in 1910 as a certain forecast of eventual victory. In nine of the cantonal governments, beginning with that of Ticino in 1891, the principle has been already put in operation. In truth, the defeat of 1910 was followed promptly by a triumph in the important canton of St. Gall, where the proportional system was adopted for the first time, February 5, 1911, for elections of the cantonal council. See E. Secretan, Suisse, in *Révue Politique et Parlementaire*, Feb., 1911; G. Daneo, La rappresentanza proporzionale nella Svizzera, in *Nuova Antologia*, Sept. 16, 1910.

or eight cantons, should have the right at any time to demand the passage, modification, or repeal of any sort of federal law or federal decree. In December, 1906, the project was debated in the National Council, after which it was referred to the Federal Council for further consideration. The proposal is still pending, but its eventual adoption is probable.[1]

## IV. Political Parties

**478. Centralism vs. Federalism.**—Until the middle of the nineteenth century the most fundamental of political questions in modern Switzerland was that of centralization, and the most enduring of political cleavages among the people was that which marked off the "centralists" from the "federalists." There was a time when the annihilation of the cantons and the establishment of a thoroughly consolidated state was not only openly advocated but confidently predicted. With the establishment, however, of the reasonable compromise embodied in the constitution of 1848 the issue of centralization dropped pretty much into the background. There continued to be, and still are, "centralizers;" but the term has come long since to denote merely men who, with due regard for the susceptibilities of the cantons, direct their influence habitually to the strengthening of the central agencies of government.

The constitution of 1848 was the work of a combination of centralist elements which acquired the general designation of Radicals. Opposed to the Radicals were the federalist Moderates. Between 1848 and 1874 controlling influence was maintained steadily by the Radicals, although during the decade 1850-1860 there was a fusion of parties in consequence of which there existed through many years an extremely intricate political situation. Gradually there emerged a three-fold party grouping, which has survived uninterruptedly from the era of the constitutional revision of 1874 until our own day. The three parties, as aligned now through more than a generation in the National Council, are: (1) the Right, or Clericals; (2) the Left, or Radicals; and (3) the Centre, or Liberals. To these, in very recent times, must be added a small but growing group of the Extreme Left, comprising ultra-democrats and socialists.

**479. The Parties of To-day.**—The basis of segregation of the Right is primarily religious. The party is thoroughly clerical, and it has for

[1] Dodd, Modern Constitutions, II., 280–281. For references on the initiative and the referendum see p. 420. A very satisfactory appraisal of the operation of these principles in Switzerland may be found in Lloyd, A Sovereign People, chaps. 14–15. See also W. E. Rappard, The Initiative and the Referendum in Switzerland, in *American Political Science Review*, Aug., 1912.

its fundamental object the defense of the Catholic church and the interests of the Catholic population. In the Catholic cantons it occupies the field almost alone, and everywhere it is the most compact and zealous of the parties, although even it is not without a certain amount of division of opinion and of policy. The Left, or Radical party, has always represented a combination of widely varied shades of radicalism and democracy. Its greatest strength lies in the predominantly Protestant cantons, and it is distinctly anti-clerical. Large portions of the party have ceased long since to be really radical, although on one side there is an imperceptible shading off into the ranks of the advanced democrats and socialists. Through many years the party has been lacking notoriously in cohesion. Between the Conservative Right and the Radical Left stands the Centre, or the Liberal group, lacking most notably of all in unity, but preserving the traditional Swiss principles of personal freedom in defiance of the tendency of the state in the direction of paternalism. The Liberals are not strong numerically, but they comprise men of wealth and influence (largely conservative Protestants), and in the shaping of economic policies, in which they are interested principally, they sometimes exercise a powerful influence. During the years immediately following the constitutional revision of 1874 no one of these three parties possessed in the Federal Assembly a clear majority, with the consequence that the Centre was able to maintain a balance between the other two. Gradually, however, the Radicals regained their former ascendancy, and in subsequent years their preponderance, in especially the lower chamber, has tended steadily to be increased.

**480. Party Stability and Strength.**—Concerning the political parties of Switzerland two or three things are worthy of special observation. The first is the remarkable stability which these parties, despite their obvious lack of cohesion, exhibit from the point of view both of party identity and of party strength. Except the Socialists, who have ceased to vote and act with the Radicals, there has sprung into existence not one new political party since 1874. Numerous and varied as have been the political issues of these four decades, no one of them has given rise to a new party grouping. And, save for the gradual augmentation of Radical strength to which allusion has been made, there has been in this period no noteworthy change in the relative strength of the party groups. Sudden fluctuations, such as in other countries are common, are in Switzerland quite unknown. The reasons are varied and not wholly clear, but among them seem to be the brevity of national legislative sessions, the lack of federal patronage whereby party zeal may be whetted, the indirect method of electing the

Federal Council, and the essentially non-partisan character of the referendum.[1] Party strength in the National Council following the election of 1878 was: Clericals, 35; Liberals, 31; Radicals, 69. After the election of 1881 it was: Clericals, 36; Liberals, 26; and Radicals, 83. In these proportions the six triennial elections between 1884 and 1902 produced no important change, although in 1890 the Socialists broke somewhat into the balance by winning six seats. After the census of 1900 the number of members of the Council was raised from 147 to 167, and the results of the election of 1902 were as follows: Clericals, 35; Liberals, 25; Radicals, 97; Socialists, 9; and Independents, 1. In 1905 the Radicals, who hitherto had co-operated with the Socialists in many constituencies, broke with them upon the question of military policy, with the result that the Socialist contingent in the Council was cut to two. In 1908 and 1911 the Socialists made, however, some recovery; so that, on the whole, the party situation in the Council remains to-day very nearly what it was ten years ago. By popular suffrage the Radicals are continued uninterruptedly in control, although the people do not hesitate again and again to reject measures framed by Radical administrators and law-makers and submitted to the vote of the nation.

**481. The Inactivity of Parties.**—A second important fact respecting the parties of Switzerland is their all but total lack of organization and machinery. Parties are little more than groups of people who hold similar views upon public questions. Of office-seekers there are few, and of professional politicians fewer still. Elections are not infrequently uncontested, and only at rare intervals do they serve to awaken any considerable public enthusiasm. There are no campaign managers and funds, no platforms, no national committees, no elaborate systems of caucuses or conventions. Candidates for seats in the National Council are nominated by political gatherings in the several districts, but the proceedings are frequently of an all but purely non-partisan character. Political congresses are held occasionally, and a few political associations exist, but their activities are limited and comparatively unimportant. So far as there is party vigor at all, it is expended principally upon local issues and contests within the cantons.

Finally, it must be observed that the Swiss government is not a government by party at all. The Federal Council regularly includes members of more than one party, and there is no attempt to preserve in the body a homogeneous partisan character. Even in the legislative councils considerations of party are but incidental. Upon by no means

[1] Upon this subject, especially the effects of the referendum upon political parties, see Lowell, Governments and Parties, II., 314–332.

all public issues are party lines drawn, and where they are drawn there is seldom that compactness and discipline of party to which legislative assemblies in other nations are accustomed. An evidence of the secondary importance of party demarcation is afforded by the fact that, instead of being arranged in groups according to party affiliations, the members of the National Council are so placed, as a rule, that all of the deputies of a canton occupy contiguous seats. The Federal Council, being elected by the Federal Assembly, is practically certain to reflect the preponderating political complexion of that body. But, in the entire absence of the parliamentary system, there is no essential reason why politically the executive and legislative organs should be in accord.[1]

## V. The Judiciary

**482. The Federal Court: Civil Jurisdiction.**—In respect to organization, the Swiss federal judiciary is very simple; in respect to functions, it is extremely complex. It comprises but a single tribunal, the Bundesgericht, or Federal Court. The court, created originally in 1848, consists to-day of sixteen judges and nine alternates, all chosen by the Federal Assembly for a term of six years. Any citizen eligible to the National Council may be elected to the Federal Court, but it is incumbent upon the Assembly to take care that all of the three officially recognized languages—German, French, and Italian—are represented. The president and vice-president of the court are designated by the Assembly, for a two years' term, but the court is authorized to organize its own secretariat and to appoint the officials thereof. Judges are forbidden to sit in either house of the federal legislature, to occupy any other office, or to engage in any alien pursuit or profession. Their yearly salary is 12,000 francs. The seat of the Court is Lausanne, in the French province of Vaud.

The jurisdiction of the Federal Court extends not only to ordinary civil and criminal cases but also to cases arising under public law. The competence of the tribunal in civil cases is very considerable. It extends to all suits between the Confederation and the cantons; between the Confederation and corporations or individuals, when such corporations or individuals appear as plaintiffs, and when the amount involved exceeds 3,000 francs; between cantons; and between cantons and corporations or individuals, upon request of the parties, and when the amount involved exceeds 3,000 francs. The constitution authorizes the

[1] On Swiss political parties see Lowell, Governments and Parties, II., Chap. 13; Adams and Cunningham, The Swiss Confederation, Chap. 7.

Confederation to enlarge, by legislation, the competence of the Court,[1] and from time to time a variety of specific fields of civil jurisdiction have been opened to it, such as those of transportation and bankruptcy. In addition to original jurisdiction in all matters that have been named, the Court is required by the constitution to exercise appellate jurisdiction in cases carried on appeal, by mutual consent of the parties, from the cantonal courts. For the adjudication of civil cases the Court divides itself into two chambers of seven members each, presided over respectively by the president and vice-president.

**483. Criminal and Public Law Jurisdiction.**—The tribunal's criminal jurisdiction is less extensive. It covers, in the main, cases of high treason against the Confederation, crimes and misdemeanors against the law of nations, political crimes and misdemeanors of such seriousness as to occasion armed federal intervention, and charges against officers appointed by a federal authority, when such authority makes application to the Federal Court. In cases falling within any one of these categories the Court is required to employ a jury to decide questions of fact. With the consent of the Federal Assembly, criminal cases of other kinds may be referred to the Federal Court by the cantonal governments. For the trial of criminal cases the Court is divided each year into four chambers, each of three members, save the fourth and highest, the Kassationshof, or Court of Appeals, which has five. The Confederation is divided into three Assizenbezirke, or assize districts, and from time to time one of the criminal chambers sits in each.

Within the domain of public law the Court is given cognizance of conflicts of jurisdiction between federal and cantonal authorities, conflicts between cantons when arising out of questions of public law, complaints of violation of the constitutional rights of citizens, and complaints of individuals by reason of the violation of concordates or treaties. In actual operation, the range of powers which would appear thus to be conferred is much restricted by a clause which declares that "conflicts of administrative jurisdiction are reserved, and are to be settled in a manner prescribed by federal legislation."[2] Legislation in pursuance of this clause has withdrawn from the jurisdiction of the Court a long list of possible subjects of litigation. Like European courts generally, the Swiss Federal Court possesses no power to determine the constitutionality of law, federal or cantonal. On the contrary, it is obligated to apply all law, by whatever proper authority enacted.[3]

[1] Art. 114. Dodd, Modern Constitutions, II., 287.

[2] Art. 112. Ibid., II., 286.

[3] On the Swiss federal judiciary see Vincent, Government in Switzerland, Chap. 15; Adams and Cunningham, The Swiss Confederation, Chap. 5.

**484. The Civil Code.**—In 1898 the nation, through the means of a referendum, adopted the principle of the unification of all cantonal legal systems, civil and criminal, in a set of federal codes. Through more than a decade the task has been in progress, drafts being prepared by experts and submitted from time to time for criticism to special commissions and to public opinion. Early in 1908 the Assembly adopted an elaborate Civil Code which in this way had been worked out, and January 1, 1912, this monumental body of law was put in operation. By it many long established practices within the individual cantons were abolished or modified; but the humane and progressive character of the Code won for it such a measure of public approval that there was not even demand that the instrument be submitted to a referendum.

# PART VI.—AUSTRIA-HUNGARY

## CHAPTER XXIV

### AUSTRIA-HUNGARY PRIOR TO THE AUSGLEICH

**485. The Dual Monarchy.**—The dual monarchy Austria-Hungary, comprising a sixteenth of the area, and containing an eighth of the population, of all Europe, is an anomaly among nations. It consists, strictly, of two sovereign states, each of which has a governmental system all but complete within itself. One of these is known officially as "The Kingdoms and Lands represented in the Reichsrath," but more familiarly as Cisleithania, or the Empire of Austria. The other, officially designated as "The Lands of St. Stephen's Crown," is commonly called Transleithania, or the Kingdom of Hungary. By certain historical and political ties the two are bound together under the official name of the Österreichisch-ungarische Monarchie, or Austro-Hungarian Monarchy.[1] In the one the common sovereign is Emperor; in the other, Apostolic King.

"If," says a modern writer, "France has been a laboratory for political experiments, Austria-Hungary is a museum of political curiosities, but it contains nothing so extraordinary as the relation between Austria and Hungary themselves." [2] In its present form this relation rests upon the memorable Ausgleich, or Compromise, of 1867. The historical phases of it, however, may be traced to a period as remote as the first half of the sixteenth century, when, in 1526, after the Hungarians had suffered overwhelming defeat by the Turks at the Battle of Mohács, a Hapsburg prince, the later Emperor Ferdinand I., assumed, upon election by the Hungarian diet, the throne of the demoralized eastern kingdom.[3] Until the eighteenth century the union of the two monarchies was always precarious, much of the time practically non-existent. Set in the midst of a whirlpool of races and political powers, the ancient Hungarian state, recovered from its days of disaster, struggled unremittingly to preserve its identity, and even to regain its independence,

[1] This designation was first employed in a diploma of the Emperor Francis Joseph I., November 14, 1868 (see p. 459).

[2] Lowell, Governments and Parties, II., 177.

[3] See p. 448.

as against the overshadowing Imperial authority of which Austria was the seat. The effort was fairly successful and as late as the Napoleonic period Hungary, while bound to her western neighbor by a personal union through the crown, maintained not only her essential autonomy but even the constitutional style of government which had been hers since at least the early portion of the thirteenth century. A rapid sketch of the earlier political development of the two states seems a necessary introduction to an examination of the institutions, joint and separate, which to-day enter into the texture of their governmental organization.

## I. Austrian Political Development to 1815

**486. Origins.**—The original Austria was a mark, or border county, lying along the south bank of the Danube, east of the river Enns, and founded by Charlemagne as a bulwark of the Frankish kingdom against the Slavs. During the ninth century the territory was overrun successively by the Moravians and the Magyars, or Hungarians, and all traces of Frankish occupation were swept away. At the middle of the tenth century, however, following Otto the Great's signal triumph over the Hungarians on the Lech in 955, the mark was reconstituted; and from that point the development of modern Austria is to be traced continuously. The name Österreich, i. e., "eastern empire" or "dominion," appears in a charter as early as 996.

The first notable period of Austrian history was that covered by the rule of the house of Babenberg. The government of the mark was intrusted by the Emperor Otto II. to Leopold of Babenberg in 976, and from that date to the extinction of the family in 1246 the energies of the Babenbergs were absorbed principally in the enlargement of the boundaries of their dominion and in the consolidation of its administration. In 1156 the mark was raised by King Frederick I. to the dignity of a duchy, and such were the privileges conferred upon it that the duke's only obligation consisted in the attending of any Imperial diet which should be held in Bavaria and the sending of a contingent to the Imperial army for such campaigns as should be undertaken in countries adjoining the duchy.

**487. The Establishment of Hapsburg Dominion, 1276.**—In 1251—five years after the death of the last Babenberg—the estates of the duchy elected as duke Ottakar, son of Wenceslaus I., king of Bohemia. In 1276, however, Duke Ottakar was compelled to yield his three dominions of Austria, Styria, and Carinthia to Rudolph of Hapsburg, who, in 1273, upon the breaking of the Interregnum, had become German king and emperor; and at this point began in Austria the

rule of the illustrious Hapsburg dynasty of which the present Emperor Francis Joseph is a representative. Under the adroit management of Rudolph the center of gravity of Hapsburg power was shifted permanently from the Rhine to the Danube, and throughout the remainder of the Middle Ages the history of Austria is a story largely of the varying fortunes of the Hapsburg interests. In 1453 the duchy was raised to the rank of an archduchy, and later in the century the Emperor Maximilian I. entertained plans for the establishment of an Austrian electorate, or even an Austrian kingdom. These plans were not carried into execution, but the Austrian lands were constituted one of the Imperial circles which were created in 1512, and in 1518 representatives of the various Austrian Landtage, or diets, were gathered for the first time in national assembly at Innsbrück.

**488. Austro-Hungarian Consolidation.**— In 1519 Maximilian I. was succeeded in the archduchy of Austria, as well as in the Imperial office, by his grandson Charles of Spain, known thenceforth as the Emperor Charles V. To his brother Ferdinand, however, Charles resigned the whole of his Austrian possessions, and to Austrian affairs he gave throughout his reign but scant attention. Ferdinand, in turn, devoted himself principally to warfare with the Turks and to an attempt to secure the sovereignty of Hungary. His efforts met with a measure of success and there resulted that affiliation of Austria and Hungary which, though varying greatly from period to period in strength and in effect, has been maintained to the present day. During a century succeeding Ferdinand's accession to the Imperial throne in 1556, the affairs of Austria were inextricably intertwined with those of the Empire, and it was only with the virtual disintegration of the Empire in consequence of the Thirty Years' War that the Hapsburg sovereigns fell back upon the policy of devoting themselves more immediately to the interests of their Austrian dominion.

The fruits of this policy were manifest during the long reign of Leopold I., who ruled in Austria from 1655 to 1705 and was likewise emperor during the last forty-eight years of this period. At the close of a prolonged series of Turkish wars, the Peace of Karlowitz, January 26, 1699, added definitely to the Austrian dominion Slavonia, Transylvania, and all Hungary save the banat of Temesvár, and thus completed the edifice of the Austrian monarchy.[1] The period was

[1] At the diet of Pressburg, in 1687–1688, the Hungarian crown had been declared hereditary in the house of Hapsburg, and the Austrian heir, Joseph, had been crowned hereditary king. In 1697 Transylvania was united to the Hungarian monarchy. The banat of Temesvár was acquired by the Hapsburgs in 1718. The term "banat" denotes a border district, or march.

likewise one of internal consolidation. The Diet continued to be summoned from time to time, but the powers of the crown were augmented enormously, and it is to these years that scholars have traced the origins of that thoroughgoing bureaucratic régime which, assuming more definite form under Maria Theresa, continued unimpaired until the revolution of 1848. It was in the same period that the Austrian standing army was established.

**489. Development of Autocracy Under Maria Theresa, 1740–1780.**— The principal threads in Austrian history in the eighteenth century are the foreign entanglements, including the war of the Spanish Succession, the war of the Austrian Succession, and the Seven Years' War, and the internal measures, of reform and otherwise, undertaken by the successive sovereigns, especially Maria Theresa (1740–1780) and Joseph II. (1780–1790). For Austria the net result of the wars was the loss of territory and also of influence, among the states of the Empire, if not among those of all Europe. On the side of internal affairs it may be observed simply that Maria Theresa became virtually the founder of the unified Austrian state, and that, in social conditions generally, the reign of this sovereign marks more largely than that of any other the transition in the Hapsburg dominions from mediæval to modern times. Unlike her doctrinaire son and successor, Joseph, Maria Theresa was of an eminently practical turn of mind. She introduced innovations, but she clothed them with the vestments of ancient institutions. She made the government more than ever autocratic, but she did not interfere with the nominal privileges of the old estates. In Hungary the constitution was left untouched, but during the forty years of the reign the Diet was assembled only four times, and government was, in effect, by royal decree. Joseph II. assumed the throne in 1780 bent primarily upon a policy of "reform from above." Utterly unacquainted with the actual condition of his dominions and unappreciative of the difficulties inherent in their administration, the new sovereign set about the sweeping away of the entire existing order and the substituting of a governmental scheme which was logical enough, to be sure, but entirely impracticable. The attempt, as was inevitable, failed utterly.

**490. Austria and France, 1789–1815.**— Leopold II. inherited, in 1790, a dominion substantially as it was at the death of Maria Theresa. Prior to his accession Leopold had acquired a reputation for liberalism, but apprehension aroused by the revolution in France was of itself sufficient to turn him promptly into the traditional paths of Austrian autocracy. His reign was brief (1790–1792), but that of his son and successor, Francis II., which continued through the revolutionary

epoch, was essentially a continuation of it, and from first to last there was maintained with complete success that relentless policy of "stability" so conspicuously associated later with the name of Metternich. Hardly any portion of Europe was less affected by the ideas and transformations of the Revolution than was Austria.

Having resisted by every means at her disposal, including resort to arms, the progress of revolution, Austria set herself firmly, likewise, in opposition to the ambitions of Napoleon. Of the many consequences of the prolonged combat between Napoleon and the Hapsburg power, one only need be mentioned here. August 11, 1804, Francis II., archduke of Austria and emperor of the Holy Roman Empire, assumed the name and title of Francis I., emperor of Austria. To the taking of this step the Hapsburg monarch was influenced in part by Napoleon's assumption, three months previously, of the title of emperor of the French, and in part by anticipation that the Holy Roman Empire would soon be subverted completely by the conqueror. The apprehension proved well-founded. Within two years it was made known definitely that the Napoleonic plan of international readjustment involved as one of its principal features the termination, once for all, of an institution which, as Voltaire had already said, was "no longer holy, Roman, or an empire." August 6, 1806, the title and functions of Holy Roman Emperor were relinquished formally by the Austrian monarch. The Austrian imperial title of to-day, dates, however, from 1804.

## II. Hungarian Political Development to 1815

**491. Beginnings.**—According to accounts which are but indifferently reliable, the Magyars, or Hungarians, lately come as invaders from Asia, made their first appearance in the land which now bears their name in the year 895. Certain it is that during the first half of the tenth century they terrorized repeatedly the populations of Germany and France, until, in 955, their signal defeat at the Lechfeld by the German king (the later Emperor Otto I.) checked effectually their onslaughts and re-enforced the disposition already in evidence among them to take on a settled mode of life. In the second half of the tenth century they occupied definitely the valleys of the Danube and the Theiss, wedging apart, as do their descendants to this day, the Slavs of the north and those of the Balkan regions.

**492. Institutional Growth Under Stephen I., 997–1038.**—The principal formative period in the history of the Hungarian nation is the long reign of Stephen I., or, as he is more commonly known, St.

Stephen. In this reign were established firmly both the Hungarian state and the Hungarian church; and in the organization of both Stephen exhibited a measure of capacity which entitles him to high rank among the constructive statesmen of mediæval Europe. Under his predecessor the court had accepted Roman Christianity, but during his reign the nation itself was Christianized and the machinery of the Church was for the first time put effectively in operation. In the year 1001 Pope Sylvester II. accorded formal recognition to Magyar nationality by bestowing upon Prince Stephen a kingly crown, and to this day the joint sovereign of Austria-Hungary is inducted into office as Hungarian monarch with the identical crown which Pope Sylvester transmitted to the missionary-king nine centuries ago. In the elaboration of a governmental system King Stephen and the advisers whom he gathered from foreign lands had virtually a free field. The nation possessed a traditional right to elect its sovereign and to gather in public assembly, and these privileges were left untouched. None the less, the system that was set up was based upon a conception of royal power unimpaired by those feudal relationships by which in western countries monarchy was being reduced to its lowest estate. The old Magyar tribal system was abolished and as a basis of administration there was adopted the Frankish system of counties. The central and western portions of the country, being more settled, were divided into forty-six counties, at the head of each of which was placed a count, or lord-lieutenant (*föispán*), appointed by the crown and authorized in turn to designate his subordinates, the castellan (*vârnagy*), the chief captain (*hadnagy*), and the hundredor (*szâzados*). This transplantation of institutions is a matter of permanent importance, for, as will appear, the county is still the basal unit of the Hungarian administrative system.

**493. The Golden Bull, 1222.**—During the century and a half which followed the reign of Stephen the consolidation of the kingdom, despite frequent conflicts with the Eastern Empire, was continued. The court took on something of the brilliancy of the Byzantine model, and in the later twelfth century King Béla III. inaugurated a policy—that of crowning as successor the sovereign's eldest son while yet the sovereign lived—by which were introduced in effect the twin principles of heredity and primogeniture. In 1222 King Andrew II. (1204–1235) promulgated a famous instrument, the *Bulla Aurea*, or Golden Bull, which has been likened many times to the Great Charter conceded to his barons by King John of England seven years earlier. The precise purport of the Golden Bull is somewhat doubtful. By some the instrument has been understood to have comprised a virtual

surrender on the part of the crown in the interest of a class of insolent and self-seeking nobles with which the country was cursed. By others it has been interpreted as a measure designed to strengthen the crown by winning the support of the mass of the lesser nobles against the few greater ones.[1] The exemption of all nobles from taxation was confirmed; all were exempted likewise from arbitrary arrest and punishment. On the other hand, it was forbidden expressly that the titles and holdings of lords-lieutenant should become hereditary. The most reasonable conclusion is that the instrument represents a compromise designed to afford a working arrangement in a period of unusual stress between crown and nobility. Although the document was amplified in 1231 and its guarantees were placed under the special guardianship of the Church, it does not appear that its positive effects in the period immediately following were pronounced. The Golden Bull, none the less, has ever been regarded as the foundation of Hungarian constitutional liberty. As such, it was confirmed specifically in the coronation oath of every Hapsburg sovereign from the sixteenth to the eighteenth century.

**494. Three Centuries of Constitutional Unsettlement.**—The last century of the Árpád dynasty, which was ended in 1308, was a period of depression and of revolution. The weakness of the later Árpáds, the ruin wrought by the Tatar invasion of 1241–1242, the infiltration of feudalism, and perennial civil discord subverted the splendid monarchical establishment of King Stephen and brought the country into virtual subjection to a small body of avaricious nobles. The Árpáds were succeeded by two Angevin princes from the kingdom of Naples—Charles I. (1310–1342) and Louis I. (1342–1382)—under whom notable progress was made toward the rehabilitation of the royal power. Yet in the midst of their reforms appeared the first foreshadowings of that great Turkish onslaught by which eventually the independent Hungarian monarchy was destined to be annihilated completely. The long reign of Sigismund (1387–1437) was occupied almost wholly in resistance to the Ottoman advance. So urgent did this sovereign deem the pushing of military preparations that he fell into the custom of summoning the Diet once, and not infrequently twice, a year, and this body acquired rapidly a bulk of legislative and fiscal authority which never before had been accorded it. Persons entitled to membership were regularly the nobles and higher clergy. But in 1397 the free and royal towns were invited to send deputies, and this privilege seems to have been given statutory confirmation. By the ripening of the Hungarian feudal

[1] J. Andrassy, Development of Hungarian Constitutional Liberty (London, 1908), 93.

system, however, and the struggles for the throne which followed the death of King Albert V. (1439), much that was accomplished by Sigismund and his diets was undone. Ultimately, measures of vigilance were renewed under John Hunyadi,—by voice of the Diet "governor" of Hungary, 1446–1456,—and, under his son King Matthias I. (1458–1490). During the last-mentioned reign fifteen diets are known to have been held, and no fewer than 450 statutes to have been enacted. The Hungarian common law was codified afresh and the entire governmental system overhauled. But again succeeded a period, from the accession of Wladislaus II. to the battle of Mohács, during which turbulence reigned supreme and national spirit all but disappeared.

**495. The Establishment of Austrian Dominion.**—In 1526 the long expected blow fell. Under the Sultan Suleiman the Magnificent the Turks invaded the Hungarian kingdom and at the battle of Mohács, August 28, put to rout the entire Hungarian army. The invading hosts chose to return almost instantly to Constantinople, but when they withdrew they left one-quarter of the Hungarian dominion in utter desolation. It was at this point, as has been stated, that the Hapsburg rulers of Austria first acquired the throne of Hungary. The death of King Louis at Mohács was followed by the election of John Zapolya as king. But the archduke Ferdinand, whose wife, Anne, was a sister of Louis, laid claim to the throne and, in November, 1527, contrived to procure an election thereto at the hand of the Diet. In 1529 the deposed Zapolya was reinstated at Buda by the Sultan. The upshot was civil war, which was terminated in 1538 by a treaty under whose terms the kingdom was divided between the two claimants. Zapolya retained approximately two-thirds of the country, while to Ferdinand was conceded the remaining portion, comprising Croatia-Slavonia and the five westernmost counties. The government which Zapolya maintained at Buda had rather the better claim to be considered the continuation of the old Hungarian monarchy; but from 1527 onwards some portion of Hungary, and eventually the whole, was attached regularly to the Hapsburg crown.

In 1540 Zapolya died and the Diet at Buda elected as king his infant son John Sigismund. On the basis of earlier pledges Ferdinand laid claim to Zapolya's possessions, but the Sultan intervened and in 1547 there was worked out a three-fold division of the kingdom, on the principle of *uti possedetis*, under which thirty-five counties (including Croatia and Slavonia) were assigned to Ferdinand, Transylvania and sixteen adjacent counties were retained by John Sigismund, while the remaining portions of the kingdom were annexed to the dominions of the Sultan. With frequent modifications in detail, this three-fold

division persisted through the next century and a half. The period was marked by frequent wars, by political confusion, and by the assumption on the part of the Hapsburg sovereigns of an increasingly autocratic attitude in relation to their Hungarian dependencies. It was brought to a close by the Peace of Karlowitz, January 26, 1699, whereby the Hapsburg dynasty acquired dominion over the whole of Hungary, except the banat of Tamesvár, which was acquired nineteen years later.

**496. Austrian Encroachment: the Pragmatic Sanction.**—The immediate effect of the termination of the Turkish wars was to enhance yet further the despotism of the Hapsburgs in Hungary. In 1687 the Emperor Leopold I. induced a rump diet at Pressburg to abrogate that clause of the Golden Bull which authorized armed resistance to unconstitutional acts of the sovereign, and likewise to declare the Hungarian crown hereditary in the house of Hapsburg. After upwards of seven hundred years of existence, the elective Hungarian monarchy was brought thus to an end. In 1715 King Charles III.[1] persuaded the Diet to consent to the establishment of a standing army, recruited and supported under regulation of the Diet but controlled by the Austrian council of war. By the diet of 1722 there was established a Hungarian court of chancery at Vienna and the government of Hungary was committed to a stadtholder at Pressburg who was made independent of the Diet and responsible to the sovereign alone. The diet of 1722 likewise accepted formally the Pragmatic Sanction of 1713 by which the Emperor Charles settled the succession to his hereditary dominions, in default of male heirs, upon his daughter Maria Theresa and her heirs;[2] and in measures promulgated during the succeeding year the Emperor entered into a fresh compact with his Hungarian subjects which continued the basis of Hapsburg-Hungarian relations until 1848. On the one hand, Hungary was declared inseparable from the Hapsburg dominions, so long as there should be a legal heir; on the other, the crown was sworn to preserve the Hungarian constitution intact, with all the rights, privileges, laws, and customs of the kingdom. The net result of all of these measures, none the less, was to impair perceptibly the original autonomy of the Hungarian state.

**497. The Later Eighteenth Century.**—Maria Theresa cherished a genuine interest in Hungarian affairs and was deeply solicitous concerning the welfare of her Hungarian subjects. It was never her intent, however, to encourage Hungarian self-government. The constitution

[1] Charles VI. as emperor.

[2] The Pragmatic Sanction was accepted at different dates by the various diets of the Austro-Hungarian lands: in 1713 by Croatia, and from 1720 to 1724 by the other diets. It was finally proclaimed a fundamental law in 1724.

of the kingdom was not subverted; it was simply ignored. The Diet was summoned but seldom, and after 1764 not at all. Reforms were introduced, especially in connection with education, but through the medium of royal decrees alone. Joseph II. continued nominally the policy of enlightened despotism, but in so tactless a manner that most of his projects were brought to nought. Approaching the problem of Hungarian administration with his accustomed idealism, he undertook deliberately to sweep away not only the constitution of the kingdom but the whole body of Hungarian institutions and traditions. He refused even to be crowned king of Hungary or to recognize in any manner the established status of the country. His purpose was clearly to build of Austria and Hungary one consolidated and absolute state—a purpose which, it need hardly be remarked, failed of realization. The statesmanship of Leopold II. averted the impending revolt. The constitution was restored, the ancient liberties of the kingdom were confirmed, and it was agreed that the Diet should be assembled regularly every three years. Through a quarter of a century the principal interest of Leopold's successor, Francis II. (1792–1835),[1] was the waging of war upon revolutionary France and upon Napoleon, and during this period circumstances conspired to cement more firmly the relations between the Hapsburg monarchy and the Hungarian people. In Hungary, as in Austria, the time was one of political stagnation. Prior to 1811 the Diet was several times convened, but never for any purpose other than that of obtaining war subsidies.

### III. The Era of Metternich

In the thoroughgoing reaction which set in with the Congress of Vienna it fell to Austria to play the principal rôle. This was in part because the dominions of the Hapsburgs had emerged from the revolutionary epoch virtually unscathed, but rather more by reason of the remarkable position occupied during the period 1815–1848 by Emperor Francis I.'s minister and mentor, Prince Metternich. Easily the most commanding personality in Europe, Metternich was at the same time the moving spirit in international affairs and the autocrat of Austro-Hungarian politics. Within both spheres he was, as he declared himself to be, "the man of the *status quo*." Innovation he abhorred; immobility he glorified. The settlement at Vienna he regarded as essentially his own handiwork, and all that that settlement involved he proposed to safeguard relentlessly. Throughout a full generation he contrived, with consummate skill, to dam the stream of liberalism in more than half of Europe.

[1] As emperor of Austria, Francis I. (1804–1835).

**498. Condition of the Monarchy in 1815.**—In the dominions of the Hapsburgs the situation was peculiarly such as to render all change, from the point of view of Metternich, revolutionary and ruinous. In respect to territory and prestige Austria emerged from the Napoleonic wars with a distinctly improved status. But the internal condition of the monarchy, now as ever, imparted a forbidding aspect to any policy or movement which should give promise of unsettling in the minutest degree the delicate, haphazard balance that had been arrived at among the multiplicity of races, religions, and interests represented in the Emperor's dominions. In the west were the duchies, essentially German, which comprised the ancestral possessions of the Hapsburg dynasty; in the north was Bohemia, comprising, besides Bohemia proper, Silesia, and Moravia, and containing a population largely Czech; to the south lay the lately acquired Italian kingdom of Lombardo-Venetia; to the east lay the kingdom of Hungary, including the kingdom of Croatia and the principality of Transylvania, with a population preponderantly Slavic but dominated politically by the Magyars. Several of these component states retained privileges which were peculiar to themselves and were bound to the Hapsburg monarchy by ties that were at best precarious. And the differences everywhere of race, religion, language, tradition, and interest were such as to create for the Vienna Government a seemingly impossible task.

So decadent and ineffective was the Austrian administrative system when Metternich entered, in 1809, upon his ministry that not even he could have supposed that change would not eventually have to come. Change, however, he dreaded, because when change begins it is not possible to foresee how far it will go, or to control altogether the course it shall follow. Change, therefore, Metternich resisted by every available means, putting off at least as long as might be the evil day. The spirit of liberalism, once disseminated throughout the conglomerate Empire, might be expected to prompt the various nationalities to demand constitutions; constitutions would mean autonomy; and autonomy might well mean the end of the Empire itself. Austria entered upon the post-Napoleonic period handicapped by the fact that the principle upon which Europe during the nineteenth century was to solve many of her problems—the principle of nationality—contained for her nought but the menace of disintegration. Conservatism, as one writer has put it, was imposed upon the Empire by the very conditions of its being.

**499. Metternich's System: the Rise of Liberalism.**—The key to Austrian history during the period 1815–1848 is, then, the maxim of the Emperor Francis, "Govern and change nothing." In Hungary govern-

ment was nominally constitutional; elsewhere it was frankly absolute. The diets of the component parts of the Empire were not abolished, nor were the estates of the several Austrian provinces. But, constituted as they generally were on an aristocratic basis and convened but irregularly and for brief periods, their existence was a source neither of embarrassment to the Government nor of benefit to the people. "I also have my Estates," declared the Emperor upon one occasion. "I have maintained their constitution, and do not worry them; but if they go too far I snap my fingers at them or send them home." The Diet of Hungary was not once convened during the years 1812–1825. On the side of administration Metternich did propose that the various executive departments, hitherto gathered under no common management nor correlated in any degree whatsoever, should be brought under the supervision of a single minister. But not even this project was carried out effectively. Throughout the period the central government continued cumbersome, disjointed, and inefficient.

With every passing decade the difficulties of the Government were augmented. Despite a most extraordinary censorship of education and of the press, western liberalism crept slowly into the Empire and the spirit of disaffection laid hold of increasing numbers of people. The revolutions of 1820 passed without eliciting response; those of 1830 occasioned but a ripple. But during the decade 1830–1840, and especially after 1840, the growth of liberalism was rapid. In 1835 the aged Francis I. was succeeded by Ferdinand I., but as the new sovereign was mentally incapacitated the dominance of Metternich continued unimpaired.[1] In Bohemia, Hungary, and elsewhere there were revivals of racial enthusiasm and of nationalistic aspirations which grew increasingly ominous. The Hungarian diet of 1844 substituted as the official language of the chambers Magyar for Latin, and during the forties there was built up, under the leadership of Louis Kossuth and Francis Deák, a flourishing Liberal party, whose aim was the re-establishment of the autonomy of the kingdom and the thoroughgoing reform of the government. By 1847–1848 this party was insisting strenuously upon the adoption of its "Ten Points," in which were included a responsible ministry, the abolition of serfdom, equality of citizens before the law, complete religious liberty, fuller representa-

[1] Technically the control of the government was vested in a small group of dignitaries known as the Staatskonferenz, or State Conference. The nominal president of this body was the Archduke Louis, representing the crown; but the actual direction of its proceedings fell to Metternich. H. von Sybel, Die Österreichische Staatskonferenz von 1836, in *Historische Zeitschrift*, 1877.

tion in the Diet, taxation of the nobles, and control by the Diet of all public expenditures.[1]

## IV. The Revolution of 1848

**500. The Fall of Metternich.**—The crash came in 1848. Under the electrifying effect of the news of the fall of Louis Philippe at Paris (February 24), and of the eloquent fulminations of Kossuth, translated into German and scattered broadcast in the Austrian capital, there broke out at Vienna, March 12–13, an insurrection which instantly got quite beyond the Government's power to control. Hard fighting took place between the troops and the populace, and an infuriated mob, breaking into the royal palace, called with an insistence that would not be denied for the dismissal of Metternich. Recognizing the uselessness of resistance, the minister placed in the hands of the Emperor his resignation and, effecting an escape from the city, made his way out of the country and eventually to England. March 15 there was issued a hurriedly devised Imperial proclamation, designed to appease the populace, in which was promised the convocation of an assembly with a view to the drafting of a national constitution.

**501. Hungary: the March Laws.**—On the same day the Diet of Hungary, impelled by the oratory of Kossuth, began the enactment of an elaborate series of measures—the so-called March Laws—by which was carried rapidly toward completion a programme of modernization which, in the teeth of Austrian opposition, had been during some years under way. The March Laws fell into two principal categories. The first dealt with the internal government of the kingdom, the second with the relations which henceforth were to subsist between Hungary and the Austrian Empire. For the ancient aristocratic machinery of the monarchy was substituted a modern constitutional system of government, with a diet whose lower chamber, of 337 members, was to be elected by all Hungarians of the age of twenty who possessed property to the value of approximately $150. Meetings of this diet were to be annual and were to be held, no longer at Pressburg, near the Austrian border, but at the interior city of Budapest, the logical capital of the kingdom. Taxation was extended to all classes; feudal servitudes and titles payable by the peasantry were abolished; trial by jury, religious liberty, and freedom of the press were guaranteed. In

[1] On Austria during the period of Metternich see Cambridge Modern History, X., Chap. 11, XI., Chap. 3; Lavisse et Rambaud, Histoire Générale, X., Chap. 17; A. Stern, Geschichte Europas (Berlin, 1904–1911), I., Chap. 3; A. Springer, Geschichte Österreichs seit dem Wiener Frieden 1809 (Leipzig, 1863), I., 275–322; H. Meynert, Kaiser Franz I. (Vienna, 1872).

the second place, it was stipulated that henceforth Hungary should have an entirely separate and a responsible ministry, thus ensuring the essential autonomy of the kingdom. The sole tie remaining between the two monarchies was to be the person of the sovereign. Impelled by the force of circumstances, the Government at Vienna designated Count Louis Batthyány premier of the first responsible Hungarian ministry and, April 10, accorded reluctant assent to the March Laws. These statutes, though later subverted, became thenceforth the *Grundrechte* of the Hungarian people.

**502. The Austrian Constitution of 1848.**—In the meantime, the Austrians were pressing their demand for constitutionalism. The framing of the instrument which had been promised was intrusted by the Emperor to the ministers, and early in April there was submitted to an informal gathering of thirty notables representing various portions of the Empire a draft based upon the Belgium constitution of 1831. This instrument was given some consideration in several of the provincial diets, but was never submitted, as it had been promised in the manifesto of March 15 it should be, to the Imperial Diet, or to any sort of national assembly. Instead it was promulgated, April 25, on the sole authority of the Emperor. The territories to which it was made applicable comprised the whole of the Emperor's dominions, save Hungary and the other Transleithanian lands and the Italian dependencies. By it the Empire was declared an indissoluble constitutional monarchy, and to all citizens were extended full rights of civil and religious liberty. There was instituted a Reichstag, or general diet, to consist of an upper house of princes of the royal family and nominees of the landlords, and a lower of 383 members, to be elected according to a system to be devised by the Reichstag itself. All ministers were to be responsible to this diet. July 22 there was convened at Vienna the first assembly of the new type, and the organization of constitutional government was put definitely under way.

**503. The Reaction.**—Recovery, however, on the part of the forces of reaction was rapid. In Hungary the same sort of nationalistic feeling that had inspired the Magyars to assert their rights as against Austria inspired the Serbs, the Croats, and the Roumanians to demand from the Magyar Government a recognition of their several traditions and interests. The purpose of the Magyars, however, was to maintain absolutely their own ascendancy in the kingdom, and every demand on the part of the subject nationalities met only with contemptuous refusal. Dissatisfaction bred dissension, and dissension broke speedily into civil war. With consummate skill the situation was exploited by the Vienna Government, while at the same time the

armies of Radetzky and Windischgrâtz were stamping out every trace of insurrection in Lombardo-Venetia, in Bohemia, and eventually in Vienna itself. December 2, 1848, the easy-going, incompetent Emperor Ferdinand was induced by the reactionaries to abdicate. His brother, Francis Charles, the heir-presumptive, renounced his claim to the throne, and the crown devolved upon the late Emperor's youthful nephew, Francis Joseph I., whose phenomenally prolonged reign has continued to the present day. Under the guidance of Schwarzenberg, who now became the dominating figure in Austrian politics, the Hungarian March Laws were abrogated and preparations were set on foot to reduce Hungary, as other portions of the Imperial dominions had been reduced, by force of arms. Pronouncing Francis Joseph a usurper, the Magyars rose *en masse* in defense of their constitution and of the deposed Ferdinand. In the conflict which ensued they were compelled to fight not only the Austrians but also their rebellious Roumanian, Croatian, and Slavonian subjects, and their chances of success were from the outset slender. In a moment of exultation, April 14, 1849, the Diet at Budapest went so far as to declare Hungary an independent nation and to elect Kossuth to the presidency of a supposititious republic. The only effect, however, was to impart to the contest an international character. Upon appeal from Francis Joseph, Tsar Nicholas I. intervened in behalf of the "legitimate" Austrian power; whereupon the Hungarians, seeking in vain for allies, were overcome by the weight of the odds against them, and by the middle of August, 1849, the war was ended.

**504. Restoration of Autocracy.**—In Austria and Hungary alike the reaction was complete. In the Empire there had been promulgated, March 4, 1849, a revised constitution; but at no time had it been intended by the sovereign or by those who surrounded him that constitutionalism should be established upon a permanent basis, and during 1850–1851 one step after another was taken in the direction of the revival of autocracy. December 31, 1851, "in the name of the unity of the Empire and of monarchical principles," the constitution was revoked by Imperial patent. At a stroke all of the peoples of the Empire were deprived of their representative rights. Yet so incompletely had the liberal régime struck root that its passing occasioned scarcely a murmur. Except that the abolition of feudal obligations was permanent, the Empire settled back into a status which was almost precisely that of the age of Metternich. Vienna became once more the seat of a government whose fundamental objects may be summarized as (1) to Germanize the Magyars and Slavs, (2) to restrain all agitation in behalf of constitutionalism; and (3) to prevent freedom of thought and the establish-

ment of a free press. Hungary, by reason of her rebellion, was considered to have forfeited utterly the fundamental rights which for centuries had been more or less grudgingly conceded her. She not only lost every vestige of her constitutional system, her diet, her county assemblies, her local self-government; large territories were stripped from her, and she was herself cut into five districts, each to be administered separately, largely by German officials from Vienna. So far as possible, all traces of her historic nationality were obliterated.[1]

## V. The Revival of Constitutionalism: the Ausgleich

**505. Constitutional Experiments, 1860–1861.**—The decade 1850–1860 was in Austria-Hungary a period of political and intellectual torpor. Embarrassed by fiscal difficulties and by international complications, the Government at Vienna struggled with desperation to maintain the *status quo* as against the numerous forces that would have overthrown it. For a time the effort was successful, but toward the close of the decade a swift decline of Imperial prestige compelled the adoption of a more conciliatory policy. The Crimean War cost the Empire both allies and friends, and the disasters of the Italian campaigns of 1859 added to the seriousness of the Imperial position. By 1860 both the Emperor and his principal minister, Goluchowski, were prepared to undertake in all sincerity a reformation of the illiberal and unpopular governmental system. To this end the Emperor called together, March 5, 1860, representatives of the various provinces and instructed them, in conjunction with the Reichsrath, or Imperial Council, to take under consideration plans for the reorganization of the Empire. The majority of this "reinforced Reichsrath" recommended the establishment permanently of a broadly national Reichsrath, or Imperial assembly, together with the reconstitution of the old provincial diets. The upshot was the promulgation, October 20, 1860, of a "permanent and irrevocable" diploma in which the Emperor made known his intention thereafter to share all powers of legislation and finance with the diets of the various

[1] Brief accounts of the revolution of 1848–1849 in Austria-Hungary will be found in Cambridge Modern History, XI., Chaps. 6–7 (bibliography, pp. 887–893), and Lavisse et Rambaud, Histoire Générale, XI., Chap. 4. The most important treatise is H. Friedjung, Österreich von 1848 bis 1860 (2d ed., Stuttgart and Berlin, 1908), the first volume of which covers the period 1848–1851. There is a serviceable account in L. Leger, History of Austria-Hungary from the Beginning to the Year 1878, trans. by B. Hill (London, 1889), Chaps. 30–33. Older accounts in English include W. H. Stiles, Austria in 1848–9 (New York, 1852), and W. Coxe, History of the House of Austria (3d ed., London, 1907). The Hungarian phases of the subject are admirably presented in L. Eisenmann, Le compromis austro-hongroise (Paris, 1904).

portions of the Empire, and with a central Reichsrath at Vienna, the latter to be made up of members chosen by the Emperor from triple lists of nominees presented by the provincial diets.

In Hungary this programme was received with favor by the conservative magnates, but the Liberals, led by Deák, refused absolutely to approve it, save on the condition that the constitutional régime of the kingdom, abrogated in 1849, should be regarded as completely restored. At Vienna there had been no intention that the proposed innovation should entail such consequences, and within four months of its promulgation the diploma of 1860 was superseded by a patent of February 26, 1861, whereby the terms demanded by the Deák party were specifically denied. In this patent—the handiwork principally of Anton von Schmerling, Goluchowski's successor in the office of Minister of the Interior—was elaborated further the plan of the new Reichsrath. Two chambers there were to be—an upper, or House of Lords, to be made up of members appointed by the Emperor in consideration of birth, station, or merit, and a lower, or House of Representatives, to consist of 343 members (Hungary sending 85 and Bohemia 54), to be chosen by the provincial diets from their own membership. Sessions of the body were to be annual. The new instrument differed fundamentally from the old, not simply in that it substituted a bicameral for a unicameral parliamentary body, but also in that it diverted from the local diets to the Reichsrath a wide range of powers, being designed, indeed, specifically to facilitate the centralization of governmental authority.

**506. The Hungarian Opposition.**—By reason chiefly of the refusal of the Deák party to accept for Hungary anything short of the autonomy which had been enjoyed prior to 1849, the new scheme of government was for a time only partially successful. In one after another of the component parts of the Empire the provincial diets were called back to life, and the Reichsrath itself was started upon its career. But the Hungarians held aloof. The position which they assumed was that Hungary had always been a separate nation; that the union with Austria lay only through the person of the monarch, who, indeed, in Hungary was king only after he should have sworn to uphold the ancient laws of Hungary and should have been crowned in Hungary with the iron crown of St. Stephen; that no change in these ancient laws and practices could legally be effected by the emperor-king alone; that the constitution of 1861 was inadequate, not only because it had been "granted" and might as easily be revoked, but because it covered both Austria and Hungary, reduced Hungary to the position of a mere province, and was not at all identical with the Hungarian fundamental law abrogated in 1849. April 6, 1861, the Hungarian Diet was assembled for the first

time since the termination of the revolution of 1848, and the patent of the preceding February 26 was laid forthwith before it. After four months of heated debate the body refused definitely to accept the instrument and, on the contrary, adopted unanimously an address drawn up by Deák calling upon the Vienna authorities to restore the political and territorial integrity of the Hungarian kingdom. The sovereign's reply was a dissolution of the Diet, August 21, and a levy of taxes by military execution. Hungary, in turn, refused to be represented in the Reichsrath, or in any way to recognize the new order.

**507. Influences toward Conciliation.**—Through four years the deadlock continued. During the period Hungary, regarded by the authorities at Vienna as having forfeited the last vestige of right to her ancient constitution, was kept perpetually in a stage of siege. As time went by, however, it was made increasingly apparent that the surrender by which concord might be restored would have to be made in the main by Austria, and at last the Emperor was brought to a point where he was willing, by an effectual recognition of Hungarian nationality, to supply the indispensable condition of reconciliation. In June, 1865, the sovereign paid a visit to the Hungarian capital, where he was received with unexpected enthusiasm, and September 20 the patent of 1861, which the Hungarians had refused to allow to be put into execution, was suspended. For the moment the whole of the Hapsburg dominion reverted to a state of absolutism; but negotiations were set on foot looking toward a revival of constitutionalism under such conditions that the demands of the Hungarians might be brought into harmony with the larger interests of the Empire. Proceedings were interrupted, in 1866, by the Austro-Prussian war, but in 1867 they were pushed to a conclusion. In anticipation of the international outbreak which came in June, 1866, Deák had reworked a programme of conciliation drawn up in the spring of 1865, holding it in readiness to be employed as a basis of negotiation in the event of an Austrian triumph, as an ultimatum in the event of an Austrian defeat. The Austrians, as it proved, were defeated swiftly and decisively, and by this development the Hungarians, as Deák had hoped would be the case, were given an enormously advantageous position. Humiliated by her expulsion from a confederation which she had been accustomed to dominate, Austria, after the Peace of Prague (August 20, 1866), was no longer in a position to defy the wishes of her disaffected sister state. On the contrary, the necessity of the consolidation of her resources was never more apparent.

**508. The Compromise Effected, 1867.**—July 3 occurred the disaster at Sadowa. July 15 the Emperor summoned Deák to Vienna and put

to him directly the question, What does Hungary want? Two days later he accorded provisional assent to the fundamentals of the Deák *projet* and designated as premier of the first parliamentary ministry of Hungary Count Julius Andrássy. The working out of the precise settlement between the two states fell principally to two men—Deák, representing the Hungarian Liberals, and Baron Beust, formerly chief minister of the king of Saxony but in 1866 brought to Vienna and made Austrian chancellor and minister-president. After prolonged negotiation a *projet*, differing from the original one of Deák in few respects save that the unity of the monarchy was more carefully safeguarded, was made ready to be acted upon by the parliaments of the two states. February 17, 1867, the Andrassy ministry was formed at Budapest and May 29, by a vote of 209 to 89, the terms of the Ausgleich, or Compromise, were given formal approval by the Diet. At Vienna the Reichsrath would probably have been disposed to reject the proposed arrangement but for the fact that Beust held out as an inducement the re-establishment of constitutionalism in Austria. The upshot was that the Reichsrath added some features by which the *projet* was liberalized still further and made provision at the same time for the revision and rehabilitation of the Imperial patent of 1861. During the summer two deputations of fifteen members each, representing the respective parliaments, drew up a plan of financial adjustment between the two states; and by acts of December 21–24 final approval was accorded on both sides to the whole body of agreements. Already, June 8, in the great cathedral at Buda, Francis Joseph had been crowned Apostolic King of Hungary and the royal succession under the terms of the Pragmatic Sanction of 1713, after eighteen years of suspension, had been definitely resumed.[1]

[1] On Austro-Hungarian affairs in the period 1860–1867 see Cambridge Modern History, XI., Chap. 15, XII., Chap. 7 (bibliography, pp. 876–882), and Lavisse et Rambaud, Histoire Générale, XI., Chap. 13. The best treatise is L. Eisemann, Le compromis austro-hongroise (Paris, 1904). An account by an active participant is J. Andrássy, Ungarns Ausgleich mit Österreich von Jahre 1867 (Leipzig, 1897). The best detailed account in English is Leger, History of Austria-Hungary, Chaps. 34–35. Two important biographies are: A. Forster, Francis Deák, a Memoir (London, 1880), and E. Ebeling, F. F. Graf von Beust (Leipzig, 1870–71).

# CHAPTER XXV

## THE GOVERNMENT AND PARTIES OF AUSTRIA

### I. The Constitution

**509. Texts.**—The fundamental law of the Austrian Empire,[1] in so far as it has been reduced to writing, exists in the form of a series of diplomas, patents, and statutes covering, in all, a period of some two hundred years. Of these instruments the most important are: (1) the Pragmatic Sanction of the Emperor Charles VI., promulgated originally April 19, 1713, and in final form in 1724, by which is regulated the succession to the throne; (2) the Pragmatic Patent of the Emperor Francis II., August 1, 1804, in accordance with which the sovereign bears in Austria the Imperial title; (3) the diploma of the Emperor Francis Joseph I., October 20, 1860, by which was introduced in the Empire the principle of constitutional government; (4) the patent of Francis Joseph, February 26, 1861, by which was regulated in detail the nature of this government; and (5) a series of five fundamental laws (*Staatsgrundgesetze*), all bearing the date December 21, 1867, and comprising a thoroughgoing revision and extension of the patent of 1861. In a narrower sense, indeed, the constitution may be said to consist of these five documents, all of which were sanctioned by the crown as a portion of the same general settlement by which the arrangements comprehended in the Ausgleich were effected. Of them, one, in twenty articles, is essentially a bill of rights; a second, in twenty-four sections, is concerned with Imperial representation; a third, in six articles, provides for the establishment of the Reichsgericht, or Imperial court; a fourth, in fifteen articles, covers the subject of the judiciary; and the fifth, in twelve articles, deals with the exercise of administrative and executive powers.

**510. The Style of Government.**—Under the provisions of these instruments Austria is constituted a limited monarchy, with a respon-

[1] It should be emphasized that the phrase "Austrian Empire," properly used, denotes Austria alone. Hungary is no part of the Empire. Throughout the following description effort has been made to avoid inaccuracy of expression by referring to Austria-Hungary as the "dual monarchy," or simply as "the monarchy." The nomenclature of the Austro-Hungarian union is cumbersome, but therein it merely reflects the character of the union itself.

sible ministry, a bicameral legislative body, and a considerable measure of local self-government. For the exercise, upon occasion, of essentially autocratic power, however, the way was left open through the famous Section 13 of the patent of 1861, become Section 14 of the Law concerning Imperial Representation of 1867. Around no portion of the constitution has controversy raged more fiercely during the past generation. The article reads: "If urgent circumstances should render necessary some measure constitutionally requiring the consent of the Reichsrath, when that body is not in session, such measure may be taken by Imperial ordinance, issued under the collective responsibility of the ministry, provided it makes no alteration of the fundamental law, imposes no lasting burden upon the public treasury, and alienates none of the domain of the state. Such ordinances shall have provisionally the force of law, if they are signed by all of the ministers, and shall be published with an express reference to this provision of the fundamental law. The legal force of such an ordinance shall cease if the Government neglects to present it for the approval of the Reichsrath at its next succeeding session, and indeed first to the House of Representatives, within four weeks of its convention, or if one of the houses refuses its approval thereto." [1] The prolonged exercise of autocratic power might seem here to be sufficiently guarded against, but in point of fact, as was demonstrated by the history of the notable parliamentary deadlock of 1897–1904,[2] the government can be, and has been, made to run year after year upon virtually the sole basis of the article mentioned. It is only fair to add, however, that, but for some such practical resource at the disposal of the executive, constitutional government might long since have been broken down completely by the recurrent obstructive tactics of the warring nationalities.

**511. Amendment.**—The constitution promulgated March 4, 1849, made provision for a definite process of amendment. Upon declaration by the legislative power that any particular portion of the fundamental law stood in need of revision, the chambers were to be dissolved and newly elected ones were to take under consideration the proposed amendment, adopting it if a two-thirds majority could be obtained in each house. Upon all such proposals the veto of the Emperor, however, was absolute. Neither the diploma of October 20, 1860, nor the patent of February 26, 1861, contained any stipulation upon the subject, nor did any one of the fundamental laws of 1867 as originally adopted. By act of April 2, 1873, however, passed at

[1] Dodd, Modern Constitutions, I., 81.

[2] See p. 479.

the time when the lower house of the Reichsrath was being converted into an assembly directly representative of the people, the Law concerning Imperial Representation was so modified as to be made to include a specific stipulation with respect to constitutional amendment in general. Under the terms of this enactment all portions of the written constitution are subject to amendment at the hand of the Reichsrath. As in European countries generally, no essential differentiation of powers that are constituent from those that are legislative is attempted. The process of revision is made even easier than that prescribed by the ill-fated instrument of 1849. It differs in no respect from that of ordinary legislation save that proposed amendments require a two-thirds vote in each of the chambers instead of a simple majority. Since 1873 there have been adopted several amendments, of which the most notable were those of 1896 and 1907 relative to the election of representatives.

**512. The Rights of Citizens.**—For all natives of the various kingdoms and countries represented in the Reichsrath there exists a common right of Austrian citizenship. The complicated conditions under which citizenship may be obtained, exercised, and forfeited are prescribed in legislative enactments of various dates. One of the five fundamental laws of 1867, however, covers at some length the general rights of citizens, and certain of its provisions are worthy of mention.[1] All citizens, it is declared, are equal before the law. Public office is open equally to all. Freedom of passage of persons and property, within the territory of the state, is absolutely guaranteed, as is both liberty of person and inviolability of property. Every one is declared free to choose his occupation and to prepare himself for it in such place and manner as he may desire. The right of petition is recognized; likewise, under legal regulation, that of assemblage and of the formation of associations. Freedom of speech and of the press, under legal regulation, and liberty of religion and of conscience are guaranteed to all. Science and its teaching is declared free. One has but to recall the repression of individual liberty and initiative by which the era of Metternich was characterized to understand why, with the liberalizing of the Austrian state under the constitution of 1867, it should have been deemed essential to put into the fundamental law these and similar guarantees of personal right and privilege.[2]

[1] Law concerning the General Rights of Citizens. Dodd, Modern Constitutions, I., 71–74.

[2] The texts of the fundamental laws at present in operation are printed in E. Bernatzik, Die österreichischen Verfassungsgesetze (2d ed., Vienna, 1911), and in a collection issued by the Austrian Government under the title Die Staatsgrundgesetze

## II. The Crown and the Ministry

**513. The Emperor's Status.**—The sovereign authority of the Empire is vested in the Emperor. Duties are assigned to the ministers, and privileges are granted to the legislative bodies; but all powers not expressly conferred elsewhere remain with the Emperor as supreme head of the state. The Imperial office is hereditary in the male line of the house of Hapsburg-Lothringen, and the rules governing the succession are substantially those which were laid down originally in the Pragmatic Sanction of 1713 [1] promulgated by the Emperor Charles VI. to render possible the succession of his daughter Maria Theresa. Females may inherit, but only in the event of the failure of male heirs. By the abdication of the direct heir, the throne may pass to a member of the royal family who stands farther removed, as it did in 1848 when the present Emperor was established on the throne while his father was yet living. By reason of the unusual prolongation of the reign of Francis Joseph, there has been no opportunity in sixty years to put to a test the rules by which the inheritance is regulated. Since the death of the Crown Prince Rudolph the heir-presumptive has been the Archduke Francis Ferdinand, son of the Archduke Charles Louis, and nephew of the ruling Emperor. It is required that the sovereign be a member of the Roman Catholic Church.

**514. His Powers.**—By fundamental law it is declared that the Emperor is "sacred, inviolable, and irresponsible." His powers of government are exercised largely, however, through ministers who are at least nominally responsible to the Reichsrath, and through officers and agents subordinate to them. Most important among the powers expressly conferred upon the Emperor, and indirectly exercised by him, are: (1) the appointment and dismissal of ministers; (2) the naming of all public officials whose appointment is not otherwise by law provided for; (3) supreme command of the armed forces, with the

(7th ed., Vienna, 1900). The statutes of 1867 are in Lowell, Governments and Parties, II., 378–404, and, in English translation, in Dodd, Modern Constitutions, I., 71–89. The best description in English of the Austrian governmental system is Lowell, *op. cit.*, II., Chap. 8. The best extended treatise is J. Ulbrich, Lehrbuch des österreichischen Staatsrechts (Vienna, 1883). Excellent briefer works are L. Gumplowicz, Das österreichische Staatsrecht (3d ed., Vienna, 1907); J. Ulbrich, Österreichisches Staatsrecht (3d ed., Tübingen, 1904), in Marquardsen's Handbuch; and R. von Herrnritt, Handbuch des österreichischen Verfassungsrechtes (Tübingen, 1910). On the workings of the governmental system something may be gleaned from G. Drage, Austria-Hungary (London, 1909); S. Whitman, Austria (New York, 1879) and H. Rumbold, Francis Joseph and his Times (New York, 1909).

[1] Issued definitely in 1724.

power of declaring war and concluding peace; (4) the conferring of titles, orders, and other public distinctions, including the appointment of life peers; (5) the granting of pardons and of amnesty; (6) the summoning, adjourning, and dissolving of the various legislative bodies; (7) the issuing of ordinances with the provisional force of law, and (8) the concluding of treaties, with the limitation that the consent of the Reichsrath is essential to the validity of treaties of commerce and political treaties which impose obligations upon the Empire, upon any part thereof, or upon any of its citizens. Further than this, the right to coin money is exercised under the authority of the Emperor; and the laws are promulgated, and all judicial power is exercised, in his name. Before assuming the throne, the Emperor is required to take a solemn oath in the presence of the two houses of the Reichsrath "to maintain inviolable the fundamental laws of the kingdoms and countries represented in the Reichsrath, and to govern in conformity with them, and in conformity with the laws in general." [1] The present Emperor-King has a civil list of 22,600,000 crowns, half of which is derived from the revenues of Austria and half from those of Hungary. The Imperial residence in Vienna, the Hofburg, has been the seat of the princes of Austria since the thirteenth century.

**515. The Ministers: Responsibility.**—The Austrian ministry comprises portfolios as follows: Finance, the Interior, Railways, National Defense, Agriculture, Justice, Commerce, Labor, and Instruction and Worship. Three important departments—those of War, Finance, and Foreign Affairs and the Imperial and Royal House—are maintained by the affiliated monarchies in common.[2] And there are usually from one to four ministerial representatives of leading racial elements without portfolio, there being in the present cabinet one such minister for Galicia. All ministers are appointed and dismissed by the Emperor. Under the leadership of a president of the council or premier (without portfolio), they serve as the Emperor's councillors, execute his will, and administer the affairs of their respective branches of the public service. It is provided by fundamental law that they shall be responsible for the constitutionality and legality of governmental acts performed within the sphere of their powers.[3] They are responsible to the two branches of the national parliament alike, and

[1] Law concerning the Exercise of Administrative and Executive Power, December 21, 1867, § 8. Dodd, Modern Constitutions, I., 88.

[2] There is a joint ministry of finance, though each of the monarchies maintains a separate ministry for the administration of its own fiscal affairs. On the joint ministries see p. 510.

[3] Law concerning the Exercise of Administrative and Executive Power, December 21, 1867, § 9. Dodd, Modern Constitutions, I., 88–89.

may be interpellated or impeached by either. For impeachment an elaborate procedure is prescribed, though thus far it has not proved of practical utility. Every law promulgated in the Emperor's name must bear the signature of a responsible minister, and several sorts of ordinances—such as those proclaiming a state of siege or suspending the constitutional rights of a citizen—require the concurrent signature of the entire ministry. Every minister possesses the right to sit and to speak in either chamber of the Reichsrath, where the policy of the Government may call for explanation or defense, and where there are at least occasional interpellations to be answered.

Nominally, the parliamentary system is in vogue, but at best it operates only indifferently. Supposedly responsible, collectively and individually, to the Reichsrath, the ministers are in practice far more dependent upon the Emperor than upon the chambers. In France the inability of political parties to coalesce into two great opposing groups largely defeats the best ends of the parliamentary system. In Austria the numerous and ineradicable racial divisions deflect the system further still from the lines upon which theoretically it should operate. No political group is sufficiently powerful to rule alone, and no working affiliation can long be made to subsist. The consequence is, not only that the Government can ordinarily play off one faction against another and secure pretty much its own way, but also that the responsibility of the ministers to the chambers is much less effective in practice than on paper it appears to be.[1]

## III. The Reichsrath—the Electoral System

**516. The House of Lords.**—The Reichsrath consists of two chambers. The upper is known as the Herrenhaus, or House of Lords; the lower, as the Abgeordnetenhaus, or House of Representatives. The Herrenhaus consists of a somewhat variable number of men who sit in part by *ex-officio* right, in part by hereditary station, and in part by special Imperial appointment. At the close of 1910 there were in the chamber 266 members, distributed as follows: (1) princes of the Imperial family who are of age, 15; (2) nobles of high rank qualified by the possession of large estates and nominated to an hereditary seat by the Emperor, 74; (3) ecclesiastics—10 archbishops and 8 bishops—who are of princely title inherent in their episcopal seats, 18; and (4) persons nominated by the Emperor for life in recognition of special service

[1] W. Beaumont, Cabinets éphemères et ministères provisoires en Autriche, in *Annales des Sciences Politiques*, March, 1900; H. Hantich, Nouvelle phase du parlementarisme en Autriche, in *Questions Diplomatiques et Coloniales*, February 1, 1910.

rendered to the state or the Church, or unusual distinction attained in literature, art, or science, 159. By law of January 26, 1907, the number of members in the last-mentioned group may not exceed 170, nor be less than 150.[1] Within these limits, the power of the Emperor to create life peers is absolute. The prerogative is one which has several times been exercised to facilitate the enactment of measures upon whose adoption the Government was determined. The president and vice-president of the chamber are appointed from its members by the Emperor at the beginning of each session; but the body chooses all of its remaining officers. The privileges and powers of the Herrenhaus are co-ordinate with those of the Abgeordnetenhaus, save that money bills and bills fixing the number of military recruits must be presented first in the lower chamber.

**517. The House of Representatives: Composition.**—The lower chamber, as constituted by fundamental law of 1867, was made up of 203 representatives, apportioned among the several provinces and elected by the provincial diets. The system worked poorly, and a law of 1868 authorized the voters of a province to elect the stipulated quota of representatives in the event that the Diet failed to do so. Still there was difficulty, arising largely from the racial rivalries in the provinces, and by an amendment of April 2, 1873, the right of election was vested exclusively in the enfranchised inhabitants of the Empire. The number of members was at the same time increased to 353, though without modifying the proportion of representatives of the various provinces. Further amendment, in 1896, brought up the membership to 425, where it remained until 1907, when it was raised to the present figure, 516.

**518. Early Electoral Arrangements: Law of 1873.**—The broadly democratic electoral system which prevails in the Austrian dominions to-day is a very recent creation. With the introduction of constitutionalism in 1867 the problem of the franchise became one of peculiar and increasing difficulty, and the process by which the Empire has been brought laboriously to its present condition of democracy has constituted one of the most tortuous chapters in recent political history. The conditions by which from the outset the problem was complicated were three in number: first, the large survival of self-assertiveness on the part of the various provinces among whom parliamentary representatives were to be distributed; second, the keenness of the ambitions of the several racial elements for parliamentary power; and third,

[1] It is interesting to observe that this guarantee against the wholesale creation of peers was brought forward with the object of winning for the Government's Universal Suffrage Bill the assent of the upper chamber.

the utter lack of experience and of traditions on the part of the Austrian peoples in the matter of democratic government.

When, in 1873, the right of electing deputies was withdrawn from the provincial diets it was conferred, without the establishment of a new electorate, upon those elements of the provincial populations which had been accustomed to take part in the election of the local diets. These were four in number: (1) the great land-owners, comprising those who paid a certain land tax, varying in the several provinces from 50 to 250 florins ($20 to $100), and including women and corporations; (2) the cities, in which the franchise was extended to all males of twenty-four who paid a direct tax of ten gulden annually; (3) chambers of commerce and of industry; and (4) rural communes, in which the qualifications for voting were the same as in the cities. To each of these curiæ, or classes, the law of 1873 assigned a number of parliamentary representatives, to be elected thereafter in each province directly by the voters of the respective classes, rather than indirectly through the diets. The number of voters in each class and the relative importance of the individual voter varied enormously. In 1890, in the class of land-owners there was one deputy to every 63 voters; in the chambers of commerce, one to every 27; in the cities, one to every 2,918; and in the rural districts, one to every 11,600.[1]

**519. The Taaffe Electoral Bill of 1893.**—During the period covered by the ministry of Count Taaffe (February, 1879, to October, 1893) there was growing demand, especially on the part of the Socialists, Young Czechs, German Nationalists, and other radical groups, for a new electoral law, and during the years 1893-1896 this issue quite overshadowed all others. In October, 1893, Taaffe brought forward a sweeping electoral measure which, if it had become law, would have transferred the bulk of political power to the working classes, at the same time reducing to impotence the preponderant German Liberal party. The measure did not provide for the general, equal, and direct suffrage for which the radicals were clamoring, and by which the number of voters would have been increased from 1,700,000 to 5,500,000. But it did contemplate the increase of the electorate to something like 4,000,000. This it proposed to accomplish by abolishing all property qualifications of voters in the cities and rural communes [2] and by extending the voting privilege to all adult males who were able to read and write and who had resided in their electoral district a minimum of six months. To avoid the danger of an excess of democracy Taaffe planned to retain intact the curiæ of landed proprietors and chambers

[1] Hazen, Europe since 1815, 399.

[2] By a law of 1882 the direct-tax qualification had been reduced to 5 florins.

of commerce, so that it would still be true that 5,402 large landholders would be represented in the lower house by 85 deputies, the chambers of commerce by 22, and the remainder of the nation—some 24,000,000 people—by 246. Impelled especially by fear of socialism, the Conservatives, the Poles, the German Liberals, and other elements opposed the project, and there never was any real chance of its adoption. By reason of its halfway character the Socialists, in congress at Vienna in March, 1894, condemned it as "an insult to the working classes." Even in Hungary (which country, of course, the measure did not immediately concern) there was apprehension, the ruling Magyars fearing that the adoption of even a partial universal suffrage system in the affiliated state would prompt a demand on the part of the numerically preponderant Slavic populations of Hungary for the same sort of thing. Anticipating defeat, Taaffe resigned, in October, 1893, before the measure came to a vote.

**520. The Electoral Law of 1896.**—Under the Windischgrätz and Kielmansegg ministries which succeeded no progress was realized, but the cabinet of the Polish Count Badeni, constituted October 4, 1895, made electoral reform the principal item in its programme and succeeded in carrying through a measure which, indeed, was but a caricature of Taaffe's project, but which none the less marked a distinct stage of progress toward the broad-based franchise for which the radicals were clamoring. The Government's bill was laid before the Reichsrath, February 16, 1896, and was adopted unchanged within the space of two weeks. The general suffrage which the Socialists demanded was established, for the election, however, not of the 353 representatives already composing the lower chamber, but merely of a body of 72 new representatives to be added to the present membership. In the choice of these 72 additional members every male citizen twenty-four years of age who had resided in a given district as much as six months prior to an election was to be entitled to participate; but elections were to be direct only in those districts in which indirect voting had been abolished by provincial legislation. Votes were to be cast, as a rule, by ballot, though under some circumstances orally. All pre-existing classes of voters were left unchanged, and to them was simply added a fifth. The aggregate number of electors in the Empire was raised to 5,333,000. Of the number, however, the 1,732,000 comprised in the original four curiæ were still to elect 353 of the 425 members of the chamber, with the further inequity that many of the persons who profited by the new arrangement were included already in one or another of the older classes, and hence were vested by it with a plural vote. Although, therefore, the voting privilege was

now conferred upon millions of small taxpayers and non-taxpayers who never before had possessed it, the nation was still very far from a fair and democratic suffrage system.

**521. Renewed Agitation: the Universal Suffrage Law of 1907.**— Throughout the decade following 1896 electoral agitation was continuous and widespread, but not until 1905 did the situation become favorable for further reform. In September of the year mentioned Francis Joseph approved the proposal that universal suffrage be included in the programme of the Féjerváry cabinet in Hungary, and the act was taken at once to mean that the sovereign had arrived at the conclusion that the democratizing of the franchise was inevitable in all of his dominions. In point of fact, by reason of the prolonged parliamentary crisis of late years at Vienna, the Emperor was fast arriving at precisely such a conclusion. Stimulated by current developments in Hungary and in Russia, the Austrian Socialists, late in 1905, entered upon a notable series of demonstrations, and, November 28, Premier Gautsch was moved to pledge the Government to introduce forthwith a franchise reform bill based upon the principle of universal suffrage. February 23, 1906, the promise was redeemed by the presentation in the Reichsrath of proposals for (1) the abolition of the system of electoral curiæ, (2) the extension of an equal franchise to all males over twenty-four years of age and resident in their district a year, (3) the division of Austria racially into compartments so that each ethnic group might be protected against its rivals, and (4) the increase of the number of seats from 425 to 455, a fixed number to be allotted to each province, and in each province to each race, in accordance with numbers and tax-paying capacity.

The outlook for the bill in which these proposals were incorporated was at first not promising. The Social Democrats, the Christian Socialists, and the Young Czechs were favorable; the Poles were reserved in their attitude, but inclined to be hostile; practically all of the German Liberals were opposed; and the landed proprietors, long accustomed to dominate within the preponderant German element in the Reichsrath, were violently hostile. In April, 1906, while the bill was pending, the Gautsch ministry found itself without a parliamentary majority and was succeeded by a ministry made up by Prince Hohenlohe-Schillingsfürst. This ministry lasted but six weeks, and June 2 the coalition cabinet of Baron Beck assumed office. Convinced that the establishment of universal and direct suffrage would afford the best means of stimulating loyalty to the dynasty, as well as the only practicable means of freeing the Government from parliamentary obstructionism, Emperor Francis Joseph accorded the Beck ministry his earnest support in its purpose

to push to a conclusion the task of electoral reform. The effort attained fruition in the memorable Universal Suffrage Law passed by both houses of the Reichsrath in the closing days of 1906 and approved by the Emperor January 26 of the following year. The measure, which was in form an amendment of the fundamental law of December 21, 1867, concerning Imperial Representation, was opposed by the conservative and aristocratic members of both houses and by the extremer representatives of the various nationalities; but, like other portions of the constitutional system of the Empire, it may not be amended save by a two-thirds vote of both houses, and it is likely to endure through a considerable period unchanged.

**522. Racial and Geographical Distribution of Seats.**—In the course of the prolonged negotiations between the Government and representatives of the various nationalities by which the preparation of the law was attended there was worked out a fresh allotment of seats to the several racial groups of the Empire, in proportion, roughly, to tax-paying capacity. The total number of seats was raised from 425 to 516. Their distribution among the races, as compared with that formerly existing, was arranged as follows:[1]

| | *Before 1907* | *After 1907* |
|---|---|---|
| Germans of all parties | 205 | 233 |
| Czechs | 81 | 108 |
| Poles | 71 | 80 |
| South Slavs (Slovenes, Croats, Serbs) | 27 | 37 |
| Ruthenes | 11 | 34 |
| Italians | 18 | 19 |
| Roumanians | 5 | 5 |
| | 418 | 516 |

The striking feature of this readjustment is, of course, the increased number of seats assigned to the non-German nationalities. In proportion strictly to population, the Germans still possess a larger number of seats than that to which they are entitled. But the aggregate is only 233, while the aggregate of Slavic seats is 259. Even if the former German-Italian *bloc* were still effective it could control a total of only 257 votes; but, in point of fact, the Italians in the Reichsrath to-day are apt to act with the Slavs rather than with the Germans.

After decision had been reached regarding the distribution of seats in accordance with races it remained to effect a distribution geographically among the provinces of the Empire. To each of the several prov-

[1] For tables exhibiting comparatively the distribution of seats in 1867, 1873, 1896, and 1907, see W. Beaumont, Le suffrage universel en Autriche: la loi du 26 janvier 1907 in *Annales des Sciences Politiques*, Sept., 1907.

inces was assigned an aggregate quota which, in turn, was distributed within the province among the racial groups represented in the provincial population. The allotment made, in comparison with that prevailing under the law of 1896, was as follows:

| | *Before 1907* | *After 1907* |
|---|---|---|
| Kingdom of Bohemia | 110 | 130 |
| Kingdom of Galicia and Lodomeria, with the grand-duchy of Cracow | 78 | 106 |
| Archduchy of Lower Austria | 46 | 64 |
| Margravate of Moravia | 43 | 49 |
| Duchy of Styria | 27 | 30 |
| Princely County of Tyrol | 21 | 25 |
| Archduchy of Upper Austria | 20 | 22 |
| Duchy of Upper and Lower Silesia | 12 | 15 |
| Duchy of Bukovina | 11 | 14 |
| Duchy of Carniola | 11 | 12 |
| Kingdom of Dalmatia | 11 | 11 |
| Duchy of Carinthia | 10 | 10 |
| Duchy of Salsburg | 6 | 7 |
| Margravate of Istria | 5 | 6 |
| Princely County of Görz and Gradisca | 5 | 6 |
| City of Trieste and its territory | 5 | 5 |
| Territory of Vorarlberg | 4 | 4 |
| | 425 | 516 |

**523. Electoral Qualifications and Procedure.**—By the law of 1907 the class system of voting was abolished entirely in national elections, and in its stead was established general, equal, and direct manhood suffrage. With insignificant exceptions, every male citizen who has attained the age of twenty-four, and who, at the time the election is ordered, has resided during at least one year in the commune in which the right to vote is to be exercised, is qualified to vote for a parliamentary representative. And any male thirty years of age, or over, who has been during at least three years a citizen, and who is possessed of the franchise, is eligible to be chosen as a representative. Voting is by secret ballot, and an absolute majority of all votes cast is necessary for a choice. In default of such a majority there is a second ballot between the two candidates who at the first test received the largest number of votes. It is stipulated, further, that when so ordered by the provincial diet, voting shall be obligatory, under penalty of fine, and in the provinces of Lower Austria, Upper Austria, Silesia, Salsburg, Moravia, and Vorarlberg every elector is required by provincial regulation to appear at every parliamentary election in his district, and to present his ballot, the penalty for neglect (unless explained to the satisfaction of the proper magistrate) being a fine ranging from one to fifty crowns. In the House

of Lords, where there was strong opposition to the principle of manhood suffrage, effort was made to introduce in the act of 1907 a provision for the conferring of a second vote upon all voters above the age of thirty-five. By the Emperor and ministry it was urged, however, that the injection of such a modification would wreck the measure, and when the lower chamber tacitly pledged itself to enact a law designed to prevent the "swamping" of the peers by Imperial appointment at the behest of a parliamentary majority, the plural voting project was abandoned.[1]

So far as practicable, the electoral constituencies in the various provinces are arranged to preserve the distinction between urban and rural districts and to comprise racial groups that are essentially homogeneous. In regions, as Bohemia, where the population is especially mixed separate constituencies and registers are maintained for the electors of each nationality, and a man may vote on only the register of his own race and for a candidate of that race. Germans, thus, are obliged to vote for Germans, Czechs for Czechs, Poles for Poles; so that, while there may be a contest between a German Clerical and a German Liberal or between a Young Czech and a Radical Czech, there can be none between Germans and Czechs, or between Poles and Ruthenes. In general, each district returns but one representative. The 36 Galician districts, however, return two apiece. Each elector there, as elsewhere, votes for but one candidate, the device permitting the representation of minorities. The population comprising a constituency varies from 26,693 in Salsburg to 68,724 in Galicia. The average is 49,676.[2]

**524. The Reichsrath: Sessions and Procedure.**—By the law of 1867 no limit was fixed for the period of service of the parliamentary representative. The life of the Reichsrath, and consequently the tenure of the individual deputy, was terminated only by a dissolution. Under provision of an amendment of April 2, 1873, however, members of the lower chamber are elected for a term of six years, at the expiration of which period, as also in the event of a dissolution, a new election must be held. Representatives are indefinitely eligible for re-election. Vacancies are filled by special elections, which may be held at any time, according to procedure specified by law. Representatives receive a stipend of 20 crowns for each day's attendance, with an allowance for travelling expenses.

[1] As has been pointed out, the pledge was redeemed in 1907 by a measure fixing the minimum number of life peers at 150 and the maximum at 170. See p. 466.

[2] On the electoral law of 1907 see W. Beaumont, Le suffrage universel en Autriche: la loi du 26 janvier 1907, in *Annales des Sciences Politiques*, Sept., 1907; H. Hantich, Le suffrage universel en Autriche, in *Questions Diplomatiques et Coloniales*, Feb. 16, 1907; M. E. Zweig, La réforme électorale en Autriche, in *Revue du Droit Public*, April–June and July–Sept., 1907.

The fundamental law prescribes that the Reichsrath shall be convened annually, "during the winter months when possible." [1] The Emperor appoints the president and vice-president of the Herrenhaus, from among the members of the chamber, and for the period of a session. The Abgeordnetenhaus elects from its members its president and vice-president. Normally, the sessions of both houses are public, though upon request of the president, or of at least ten members, and by a decision taken behind closed doors, each house possesses the right, in exceptional instances, to exclude spectators. Projects of legislation may be submitted by the Government or by the individual members of the chambers. Measures pass by majority vote; but no act is valid unless at the time of its passage there are present in the lower house as many as 100 members, and in the upper house as many as 40. A curious provision touching the relations of the two houses is that if, on a question of appropriation or of the size of a military contingent, no agreement can be reached between the two houses after prolonged deliberation, the smallest figure approved by either house shall be regarded as voted.[2] By decree of the Emperor the Reichsrath may at any time be adjourned, or the lower chamber dissolved. Ministers and chiefs of the central administration are entitled to take part in all deliberations, and to present their proposals personally or through representatives. Each house may, indeed, require a minister's attendance. Members of the chambers may not be held responsible for any vote cast; and for any utterances made by them they may be held responsible only by the house to which they belong. Unless actually apprehended in a criminal act, no member of either house may be arrested or proceeded against judicially during the continuance of a session, except by the consent of the chamber to which he belongs.[3]

**525. The Reichsrath: Powers.**—The powers of the Reichsrath are, in general, those ordinarily belonging to a parliamentary body. According to fundamental law of 1867, they comprise all matters which relate to the rights, obligations, and interests of the provinces represented in the chambers, in so far as these matters are not required to be handled conjointly with the proper representatives of the Hungarian portion of the monarchy. The Reichsrath examines and ratifies or rejects commercial treaties, and likewise political treaties which place a fiscal bur-

[1] Law of December 21, 1867, concerning Imperial Representation, § 10. Dodd, Modern Constitutions, I., 77.

[2] Law of December 21, 1867, concerning Imperial Representation, § 13. Dodd, Ibid., I., 81.

[3] For a collection of the rules of order of the Austrian Parliament see K. and O. Neisser, Die Geschäftsordnung des Abgeordnetenhaus des Reichsrates, 2 vols. (Vienna, 1909).

den on the Empire or any portion of it, impose obligations upon individual citizens, or involve any change of territorial status. It makes provision for the military and naval establishments. It enacts the budget and approves all taxes and duties. It regulates the monetary system, banking, trade, and communication. It legislates on citizenship, public health, individual rights, education, criminal justice and police regulation, the duties and interrelations of the provinces, and a wide variety of other things. It exercises the right of legalizing or annulling Imperial ordinances which, under urgent circumstances, may be promulgated by the Emperor with the provisional force of law when the chambers are not in session.[1] Such ordinances may not introduce any alteration in the fundamental law, impose any lasting burden upon the treasury, or alienate territory. They must be issued, if issued at all, under the signature of all of the ministers, and they lose their legal force if the Government does not lay them before the lower chamber within the first four weeks of its next ensuing session, or if either of the two houses refuses its assent thereto. Each of the houses may interpellate the ministers upon all matters within the scope of their powers, may investigate the administrative acts of the Government, demand information from the ministers concerning petitions presented to the houses, may appoint commissions, to which the ministers must give all necessary information, and may give expression to its views in the form of addresses or resolutions. Any minister may be impeached by either house.[2]

## IV. Political Parties

**526. Racial Elements in the Empire.**—The key to the politics of Austria is afforded by the racial composition of the Empire's population. In our own day there is a tendency, in consequence of the spread of socialism and of other radical programmes which leap across racial and provincial lines, toward the rise of Austrian parties which shall be essentially inter-racial in their constituencies. Yet at the elections of 1907—the first held under the new electoral law—of the twenty-six party affiliations which succeeded in obtaining at least one parliamentary seat all save possibly two comprised either homogeneous racial groups or factions of such groups. Fundamentally, the racial question in Austria has always been that of German *versus* non-German. The original Austria was preponderantly German; the

[1] Issued under warrant of the much-controverted Section 14. See p. 461.

[2] Law of December 21, 1867, concerning Imperial Representation, § 21. Dodd, Modern Constitutions, I., 83. A work of value is G. Kolmer, Parlament und Verfassung in Österreich (Vienna, 1909).

wealthiest, the best educated, the most widespread of the racial elements in the Empire to-day is the German; and by the Germans it has regularly been assumed that Austria is, and ought to be, essentially a German country.[1] In this assumption the non-German populations of the Empire have at no time acquiesced; and while they have never been able to combine long or effectively against the dominating Germanic element, they have sought persistently, each in its own way, to compel a fuller recognition of their several interests and rights.

The nationalities represented within the Empire fall broadly into three great groups: the German, the Slavic, and the Latin. In an aggregate population of 26,107,304 in 1900 the Germans numbered 9,171,614, or somewhat more than 35 per cent; the Slavs, 15,690,000, or somewhat more than 60 per cent; and the Latins, 958,065, or approximately 3.7 per cent. The Germans, comprising the most numerous of the individual nationalities, occupy exclusively Upper Austria, Salsburg, and Vorarlberg, the larger portion of Lower Austria, northwestern Carinthia, the north and center of Styria and Tyrol, and, in fact, are distributed much more generally over the entire Empire than is any one of the other racial elements. The Slavs are in two principal groups, the northern and the southern. The northern includes the Czechs and Slovaks, dwelling principally in Bohemia and Moravia, and numbering, in 1900, 5,955,397; the Poles, comprising a compact mass of 4,252,483 people in Galicia and Silesia; and the Ruthenes, numbering 3,381,570, in eastern Galicia and in Bukovina. The southern Slavic group includes the Slovenes, numbering 1,192,780, in Carniola, Görz, Gradisca, Istria, and Styria, and the Servians and Croats, numbering 711,380, in Istria and Dalmatia. The peoples of Latin stock are the Italians and Ladini (727,102), in Tyrol, Görz, Gradisca, Dalmatia, and Trieste, and the Roumanians (230,963) in Bukovina. Within many of the groups mentioned there is meager survival of political unity. There are German Clericals, German Progressives, German Radicals, German Agrarians; likewise Old Czechs, Young Czechs, Czech Realists, Czech Agrarians, Czech Clericals, and Czech Radicals. Austrian party history within the past fifty years comprises largely the story of the political contests among the several nationalities, and of the disintegration of these nationalities into a bewildering throng of clamorous party cliques.

**527. Centralists and Federalists.**—The more important of the party groups of to-day trace their origins to the formative period in recent Austro-Hungarian constitutional history, 1860–1867. During this period the fundamental issue in the Empire was the degree of cen-

[1] Lowell, Governments and Parties, II., 95.

tralization which it was desirable, or possible, to achieve in the reshaping of the governmental system. On the one hand were the centralists, who would have bound the loosely agglomerated kingdoms, duchies, and territories of the Empire into a consolidated state. On the other were the federalists, to whom centralization appeared dangerous, as well as unjust to the Empire's component nationalities. Speaking broadly, the Germans, supported by the Italians, comprised the party of centralization; the Slavs, that of federalism. The establishment of the constitution of 1867, as well as of the Compromise with Hungary in the same year, was the achievement of the centralists, and with the completion of this gigantic task there gradually took form a compactly organized political party, variously known as the National German party, the German Liberals, or the Constitutionalists, whose watchwords were the preservation of the constitution and the Germanization of the Empire. For a time this party maintained the upper hand completely, but its ascendancy was menaced not only by the disaffected forces of federalism but by the continued tenseness of the clerical question and, after 1869, by intestine conflict. As was perhaps inevitable, the party split into two branches, the one radical and the other moderate. During the earlier months of 1870 the Radicals, under Hasner, were in control; but in their handling of the vexatious Polish and Bohemian questions they failed completely and, April 4, they gave place to the Moderates under the premiership of the Polish Count Potocki. The new ministry sought to govern in a conciliatory spirit and with the support of all groups, but its success was meager. February 7, 1871, a cabinet which was essentially federalist was constituted under Count Hohenwart. Its decentralizing policies, however, were of such a character that the racial question gave promise of being settled by the utter disintegration of the Empire, and after eight months it was dismissed.

**528. Rule of the German Liberals, 1871–1879.**—With a cabinet presided over by Prince Adolf Auersperg the German Liberals then returned to power. Their tenure was prolonged to 1879 and might have been continued beyond that date but for the recurrence of factional strife within their ranks. The period was one in which some of the obstructionist groups, notably the Czechs, fell into division among themselves, so that the opposition which the Liberals were called upon to encounter was distinctly less effective than otherwise it might have been. At no time since 1867 had the Czechs consented to be represented in the Reichsrath, a body, indeed, which they had persisted in refusing to recognize as a legitimately constituted parliament of the Empire. During the early seventies a party of Young

Czechs sprang up which advocated an abandonment of passive resistance and the substitution of parliamentary activity in behalf of the interests of the race. The Old Czechs were unprepared for such a shift of policy, and in 1873 they played directly into the hands of the Liberal government by refusing to participate in the consideration of the electoral reform by which the choice of representatives was taken from the provincial diets and vested in the four classes of provincial constituencies. For the carrying of this measure a two-thirds majority was required, and if the Czechs had been willing to vote at all upon it they might easily have compassed its defeat. As it was, the amendment was carried without difficulty. A tenure of power which not even the financial crisis of 1873 could break was, however, sacrificed through factional bickerings. Within both the ministry and the Reichsrath, the dominant party broke into three groups, and the upshot was the dissolution, February 6, 1879, of the ministry and the creation of a new one under the presidency of Count Taaffe, long identified with the Moderate element. Three months later the House of Representatives was dissolved. In the elections that followed the Liberals lost a total of forty-five seats, and therewith their position as the controlling party in both the Reichsrath and the nation. Taaffe retained the premiership, but his Liberal colleagues were replaced by Czechs, Poles, Clericals, and representatives indeed of pretty nearly all of the existing groups save the Germans.[1]

**529. The Taaffe Ministry, 1879–1893.**—The prolonged ministry of Count Taaffe comprises the second period of Austrian parliamentary history. Of notably moderate temper, Taaffe had never been a party man of the usual sort, and he entered office with an honest purpose to administer the affairs of the nation without regard to considerations of party or of race. The establishment of his reconstituted ministry was signalized by the appearance of Czech deputies for the first time upon the floor of the national parliament. The Taaffe government found its support in what came to be known as the Right—a quasi-coalition of Poles, Czechs, Clericals, and the Slavic and conservative elements generally.[2] It was opposed by the Left, comprising principally the German Liberals. In 1881 the various factions of the German party, impelled by the apprehension that German ascendancy might be lost forever, drew together again and entered upon a policy of opposition which was dictated purely and

[1] As at first reconstituted, the ministry contained a German Liberal, but he soon resigned.

[2] In the Chamber the Czechs, Poles, and Clericals controlled each approximately 55 votes.

frankly by racial aspirations. Attempts to embarrass the Government by obstruction proved, however, only indifferently successful. In 1888 the party was once more reconstructed.

Among the diverse groups by which the Taaffe government was supported there was just one common interest, namely, the prevention of a return to power on the part of the German Liberals. Upon this preponderating consideration, and upon the otherwise divergent purposes of the Government groups, Taaffe built his system. Maintaining rigidly his determination to permit no radical alteration of the constitution, he none the less extended favors freely to the non-Germanic nationalities, and so contrived to prolong through nearly a decade and a half, by federalist support, an essentially centralist government. Government consisted largely, indeed, in perennial bargainings between the executive authorities on the one hand and the parliamentary groups on the other, and in the course of these bargainings it was ever the legislative chambers, not the Government, that lost ground. The bureaucracy increased its hold, the administrative organs waxed stronger, the power of the Emperor was magnified. The ministry became pre-eminently the ministry of the crown, and despite strictly observed constitutional forms the spirit of absolutism was largely rehabilitated.[1]

**530. The German Recovery: Badeni, 1895–1897.**—To the eventual breakdown of the Taaffe régime various circumstances contributed. Two of principal importance were the defection of the Young Czechs and the failure of the several attempts to draw to the support of the Government the moderate German Liberals. At the elections of 1891 the Young Czechs obtained almost the entire quota of Bohemian seats, and at the same time the Liberals recovered enough ground to give them the position of the preponderant group numerically in the lower chamber. Neither of these two parties could be persuaded to

[1] The forcefully expressed view of an eminent Austrian authority, written during the parliamentary deadlock which marked the close of the last century, is of interest. "His [Taaffe's] prolonged ministry had decisive effects upon the political life of Austria. It rendered forever impossible a return to Germanizing centralism. It filled the administrative hierarchy with Slavs, who, remaining Slavs, placed at the service of their national propaganda their official influence. In combatting the Liberal party it restored the power of the court, of the aristocracy, of the Church, and it facilitated the obnoxious restoration of clericalism, by which Austria to-day is dominated. It at the same time aroused and corrupted the nationalities and the parties. It habituated them to give rein unceasingly to their ambitions and to seek to attain them less by their own force and labor than by intrigue. The public demoralization, illustrated to-day so clearly by the Austrian crisis, is properly the result of the Taaffe system." M. L. Eisenmann, in Lavisse et Rambaud, Histoire Générale, XII., 177.

accord the Government its support, and during 1891–1893 Taaffe labored vainly to recover a working coalition. Finally, in 1893, as a last resource, the Government resolved to undermine the opposition, especially German Liberalism, by the abolition of the property qualification for voting in the cities and rural communes. The nature of Taaffe's electoral reform bill of 1893 has been explained elsewhere, and likewise the reason for its rejection.[1] Anticipating the defeat of the measure, the premier retired from office October 23, 1893.

The Germans now recovered, not their earlier power, but none the less a distinct measure of control. November 12 there was established, under Prince Windischgrätz a coalition ministry, comprising representatives of the German Liberals, the Poles, and the Clericals, and this cabinet was very sucessful until, in June, 1895, it was wrecked by the secession of the Liberals on a question of language reform in Styria. After four months, covered by the colorless ministry of Count Kielmansegg, Count Badeni became minister-president (October 4, 1895) and made up a cabinet, consisting largely of German Liberals, but bent upon an essentially non-partisan administration. The two tasks chiefly which devolved upon the Badeni ministry were the reform of the electoral system and the renewal of the decennial economic compromise with Hungary, to expire at the end of 1897. The first was accomplished, very ineffectively, through the electoral measure of 1896; the second, by reason of factional strife, was not accomplished at all.

**531. The Language Question: Parliamentary Deadlock.**—The elections of 1897 marked the utter dissolution of both the United German Left and the coalition which had borne the designation of the Right. Among the 200 Germans elected to the Chamber there were distinguishable no fewer than eight groups; and the number of groups represented in the aggregate membership of 425 was at least twenty-four. Of these the most powerful were the Young Czechs, with 60 seats, and the Poles, with 59. Profiting by the recently enacted electoral law, the Socialists at this point made their first appearance in the Reichsrath with a total of 14 seats. Taking the Chamber as a whole, there was a Slavo-Clerical majority, although not the two-thirds requisite for the enactment of constitutional amendments. The radical opponents of the Government were represented by the 51 German Liberals only. But no one of the Slavic groups was disposed to accord its support save in return for favors received. In the attempt to procure for itself a dependable majority the Badeni government succeeded but in creating confusion

[1] See p. 467.

twice confounded. The Young Czechs, whose support appeared indispensable, stipulated as a positive condition of that support that Czech should be recognized as an official language in Bohemia and Moravia, and by ordinances of April–May, 1897, the Government took it upon itself to meet this condition. Within the provinces named the two languages, Czech and German, were placed, for official purposes upon a common footing. The only result, however, was to drive the Germans, already hostile, to a settled course of parliamentary obstruction, and before the year was out the Badeni cabinet was compelled to retire.

The Gautsch ministry which succeeded proposed to maintain the equality of the Czech and German tongues in Bohemia; wherefore the German Liberals persisted in their obstructionist policy and declared that they would continue to do so until the objectionable ordinances should have been rescinded. March 5, 1898, the Government promulgated a provisional decree in accordance with which in one portion of Bohemia the official tongue was to be Czech, in another German, and in the third the two together. But no one was satisfied and the ministry resigned. The coalition government of Count Thun Hohenstein which succeeded labored in the interest of conciliation, but with absolutely no success. Parliamentary sittings became but occasions for the display of obstructive tactics, and even for resort to violence, and legislation came to a standstill. By the use of every known device the turbulent German parties rendered impossible the passage of even the most necessary money bills, and the upshot was that, in the summer of 1898, the Government was obliged to fall back upon that extraordinary portion of the Austrian constitution, commonly known as Section 14, by which, in default of parliamentary legislation, the crown is authorized to promulgate ordinances with the force of law. The period of extra parliamentary government here inaugurated was destined to be extended through more than six years and to comprise one of the most remarkable chapters in recent political history.

**532. The Nadir of Parliamentarism.**—Following the retirement of the Thun Hohenstein ministry, at the end of September, 1899, the government of Count Clary-Aldingen revoked the language decrees; but the parliamentary situation was not improved, for the Czechs resorted forthwith to the same obstructionist tactics of which the Germans had been guilty and the government had still to be operated principally on the basis of Section 14. A provisional government under Dr. Wittek, at the close of 1899, was followed by the ministry of Dr. Körber, established January 20, 1900; but all attempts at conciliation continued to be unavailing. In September, 1900, the Reichsrath

was dissolved and the order for the new elections was accompanied by the ominous declaration of the Emperor that the present appeal to the nation would be the last constitutional means which would be employed to bring the crisis to an end. Amid widespread depression, threats of Hungarian independence, and rumors of an impending *coup d'état*, the elections took place, in January, 1901. The German parties realized the largest gains, but the parliamentary situation was not materially altered, and thereafter, until its fall, December 31, 1904, the Körber ministry continued to govern substantially without parliamentary assistance. In 1901–1902, by various promises, the premier induced the combatants to lay aside their animosities long enough to vote the yearly estimates, a military contingent, and certain much-needed economic reforms. But this was virtually the sole interruption of a six-year deadlock.

**533. Electoral Reform and the Elections of 1907.**—With the establishment of the second Gautsch ministry, December 31, 1904, a truce was declared and interest shifted to the carrying out of the Imperial programme of electoral reform. From the proposed liberalization of the suffrage many of the party groups were certain to profit and others had at least a chance of doing so; and thus it came about that the great electoral law of 1907 was carried through its various stages under parliamentary conditions which were substantially normal. Its progress was attended by the fall, in April, 1906, of the Gautsch ministry and, six weeks later, by that of its provisional successor. But by the coalition government of Baron Beck (June 2, 1906 to November 8, 1908) the project was pushed to a successful conclusion, and in its final form the law was approved by the Emperor, January 26, 1907.

The promulgation of the new electoral measure was followed, May 14, by a general election, the results of which may be tabulated as shown on the following page.

Each of the twenty-six groups here enumerated maintained at the time of the election an independent party organization, although in the Chamber the representatives of certain of them were accustomed to act in close co-operation. To the clericals and conservatives of all shades fell an aggregate of 230 seats; but among the various groups of this type there has never been sufficient coherence to permit the formation of a compact conservative party. Among the liberal and radical groups lack of coherence was, and remains, still more pronounced. The most striking feature of the election of 1907 was the gains made by the Social Democrats and the Christian Socialists, to be explained largely by the extension of the franchise to the non-taxpaying and small taxpaying population.

| | *Seats after election of 1907* | *Seats in previous Chamber* |
|---|---|---|
| Social Democrats | 90 | 11 |
| Christian Socialists | 67 | 26 |
| German Clericals | 29 | 29 |
| German Progressives | 23 | 60 |
| German Radicals | 24 | 46 |
| German Agrarians | 21 | 4 |
| Independent Pan-Germans | 8 | 7 |
| Pan-Germans | 3 | 15 |
| Polish Club | 54 | 66 |
| Polish Radicals | 16 | 0 |
| Polish Independent Socialists | 3 | 0 |
| Ruthenes | 28 | 9 |
| Jewish Zionists | 3 | 0 |
| Young Czechs | 19 | 47 |
| Old Czechs | 6 | 3 |
| Czech Realists | 2 | 0 |
| Czech Agrarians | 25 | 5 |
| Czech Clerical | 19 | 2 |
| Czech Radicals | 10 | 8 |
| Slovene Clericals | 22 | 19 |
| Slovene Liberals | 3 | 6 |
| Italian Liberals | 4 | 12 |
| Italian Clericals | 10 | 6 |
| Croats | 9 | 7 |
| Serbs | 2 | 0 |
| Roumanians | 5 | 4 |

**534. The Elections of 1911.**— The truce by which the election of 1907 was accompanied was not of long duration, and November 8, 1908, the ministry of Baron Beck was driven by German obstructionism to resign. After three months as provisional premier Baron von Bienerth, former Minister of the Interior, made up a cabinet which included representatives of a number of parties and which, despite occasional readjustments of portfolios, exhibited a fair measure of stability throughout upwards of two years. In December, 1910, the Czechs and Poles precipitated a cabinet crisis in consequence of which the ministry was reconstructed (January 9, 1911) in such a manner as to strengthen the Slavic and weaken the Germanic element. But the forces of opposition were not appeased, and as a last resort the Government determined upon a dissolution and an appeal to the country. The results, however, were by no means those which were desired. At the general elections, which took place June 13 and 20, the Christian Socialists, from whom the Government had drawn its most consistent support, were roundly beaten, and June 26 Baron von Bienerth and

his colleagues resigned. The ministry thereupon made up was presided over by Baron Gautsch. It, however, endured only until October 31, when it was succeeded by that of Count Stuergkh.

The elections of 1911 were hotly contested. The 516 seats to be filled were sought by 2,987 candidates, representing no fewer than fifty-one parties and factions, and second ballotings were required in almost two-thirds of the constituencies. The Czechs returned with undiminished strength, and the German Radicals and Progressives realized substantial gains. The most notable feature, however, was the victory of the Social Democrats over the Christian Socialists, especially in the capital, where the quota of deputies of the one party was raised from ten to nineteen and that of the other was cut from twenty to four. The Christian Socialists, it must be observed, are not socialists in the ordinary meaning of the term. The party was founded by Dr. Lüger a few years ago in the hope that, despite the establishment of manhood suffrage in the Empire, the Social Democrats might yet be prevented from acquiring a primacy among the German parties. It is composed largely of clericals, and in tone and purpose it is essentially reactionary. By maintaining an active alliance with the German Clerical party it contrived to hold in check the Social Democracy throughout the larger portion of the period 1907–1911. But it was handicapped all the while by internal dissension, and the defeat which it suffered at the last elections has relegated it, at least for the time being, to a subordinate place.[1]

## V. The Judiciary and Local Government

**535. General Principles: the Ordinary Tribunals.**—All judicial power in the Austrian Empire is exercised, and all judgments and sentences are executed, in the name of the Emperor. Judges are appointed for life, by the Emperor or in his name, and they may be

[1] On Austrian party politics see Lowell, Governments and Parties, II., 94–123; Drage, Austria-Hungary, Chaps. 1, 3, 12; K. Schwechler, Die österreichische Sozialdemokratie (Graz, 1907); S. Marmorek, L'Obstruction au parlement autrichien (Paris, 1908); and E. Benés, Le problème autrichien et la question tehéque; étude sur les luttes politiques des nationalités slaves en Autriche (Paris, 1908). Among valuable articles in periodicals may be mentioned: W. Beaumont, La crise du parlementarisme au Autriche; les élections législatives et la situation politique, in *Annales des Sciences Politiques*, March 15, 1901; K. Kramer, La situation politique en Autriche, ibid., October 15, 1901; G. L. Jaray, L'Autriche nouvelle: sentiments nationaux et préoccupations sociales, ibid., May 15 and Sept. 15, 1908, and La physionomie nouvelle de la question austro-hongroise, in *Questions Diplomatiques et Coloniales*, Dec. 16, 1910; Kolmer, La vie politique et parlementaire en Autriche, in *Revue Politique et Parlementaire*, July 10, 1911; and G. Blondel, Les dernières élections en Autriche-Hongrie, in *La Réforme Sociale*, Aug. 1 and 15, 1911.

removed from office only under circumstances specified by law and by virtue of a formal judicial sentence. On taking the oath of office all judicial officials are required to pledge themselves to an inviolable observance of the fundamental laws. The Law of December 21, 1867, concerning the Judicial Power withholds from the courts the power to pronounce upon the validity of statutes properly promulgated, though they may render judgment on the validity of Imperial ordinances involved in cases before them.[1] With some exceptions, fixed by law, proceedings in both civil and criminal cases are required to be oral and public; and in all cases involving severe penalties, as well as in all actions arising from political crimes and misdemeanors and offenses committed by the press, the guilt or innocence of the accused must be determined by jury.

By the law of 1867 it is stipulated that there shall be maintained at Vienna a Supreme Court of Justice and Cassation (*Oberste Gerichts- und Kassationshof*) for all of the kingdoms and countries represented in the Reichsrath, and that the organization and jurisdiction of inferior courts shall be determined by law, Of inferior tribunals there have been established 9 higher provincial courts (*Oberlandesgerichte*),[2] 74 provincial and district courts (*Landes-und Kreisgerichte*), and 96 county courts (*Bezirksgerichte*). The provincial and district courts and the county courts, together with a group of jury courts maintained in connection with the provincial and district tribunals, are courts of first instance; the higher provincial courts and the Supreme Court exercise a jurisdiction that is almost wholly appellate. There exist also special courts for commercial, industrial, military, fiscal, and other varieties of jurisdiction.

**536. The Imperial Court.**—In Austria, as in France and other continental countries, cases affecting administration and the administrative officials are withheld from the jurisdiction of the ordinary courts and are committed to special administrative tribunals. By law of 1867 provision was made for an Imperial Court (*Reichsgericht*), to exercise final decision in conflicts of jurisdiction between the two sets of courts and, in general, in all disputed questions of public law, after the manner of the Court of Conflicts in France. The Imperial Court was organized by law of April 18, 1869. It sits at Vienna, and it is composed of a president and deputy president, appointed by the Emperor for life, and of twelve members and four substitutes, also appointed for life by the Emperor upon nomination by the Reichsrath.

[1] Art. 7. Dodd, Modern Constitutions, I., 86.

[2] Located at Vienna, Graz, Trieste, Innsbrück, Zara, Prague, Brünn, Cracow, and Lemberg.

It decides finally all conflicts of competence between the administrative and the ordinary judicial tribunals, between a provincial diet and the Imperial authorities, and between the independent public authorities of the several provinces of the Empire. Very important in a country so dominated by a bureaucracy as is Austria is the power which by fundamental law is vested in the Imperial Court to pass final verdict upon the merits of all complaints of citizens arising out of the alleged violation of political rights guaranteed to them by the constitution, after the matter shall have been made the subject of an administrative decision. The purpose involved is to afford the citizen who, believing himself deprived of his constitutional rights, has failed to obtain redress in the administrative courts, an opportunity to have his case reviewed by a tribunal constituted with special view to permanence, independence, and impartiality. High-handed administrative acts which are covered by statute, however, are beyond its reach, for, like all Austrian tribunals, it is forbidden to question the validity of a duly promulgated law.[1]

**537. The Provincial Governments: Composition of the Diet.**—Each of the seventeen political divisions of the Empire has a government of its own, established on the basis of its Landesordnung, or provincial constitution. The executive, for affairs that are considered strictly divisional, consists of a provincial council, the *Landesausschuss*, composed of the president of the diet (nominated by the Emperor) as *ex-officio* chairman and from four to eight members variously elected within the province. Imperial interests are specially represented in the province, however, by a *Statthalter*, or *Landespräsident*, appointed by the crown, and independent of local control.

Functions of legislation are vested in a Landtag, or diet. The provincial diet of the modern type came into being under the operation of the Imperial diploma of October 20, 1860 (superseded by that of February 26, 1861), replacing the ancient assembly of estates which in most provinces had persisted until 1848. From 1860 onwards diets were established in one after another of the provinces, until eventually all were so equipped. Originally the diets were substantially uniform in respect to both composition and powers. Aside from certain *ex-officio* members, they were composed of deputies chosen for six years by four electoral curiæ: the great proprietors, the chambers of commerce, the towns, and the rural communes; and, until 1873, one of their principal functions was the election of the provincial delegation in the lower house of the Reichsrath. Each of the seventeen provincial diets as to-day constituted consists of a single chamber, and in most

[1] Dodd, Modern Constitutions, I., 84–85.

instances the body is composed of (1) the archbishops and bishops of the Catholic and Orthodox Greek churches; (2) the rectors of universities, and, in Galicia, the rector of the technical high school of Lemberg and the president of the Academy of Sciences of Cracow; (3) the representatives of great estates, elected by all landowners paying land taxes of not less than 100, 200, 400, or 500 crowns, according to the provinces in which their estates are situated; (4) the representatives of towns, elected by citizens who possess municipal rights or pay a stipulated amount of direct taxes; (5) the representatives of boards of commerce and industry, chosen by the members of these bodies; and (6) representatives of the rural communes, elected in eight provinces directly, in the others indirectly, by deputies (Wahlmänner) returned by all inhabitants who pay direct taxes to the amount of 8 crowns yearly. In a few of the provinces there is, besides these, a general electoral class composed of all qualified male subjects of the state over twenty-four years of age; [1] and there are some other variations, as for example, in Moravia, where, by a law of November 27, 1905, the proportional system of representation was introduced. The diets vary in membership from 26 in Vorarlberg and 30 in Görz and Gradisca to 151 in Moravia, 161 in Galicia, and 242 in Bohemia. The deputies are elected in all cases for a period of six years, and the diets assemble annually. But a session may be closed, and the diet may be dissolved, at any time by the presiding officer, under the direction of the Emperor.

**538. Functions of the Diet.**— The powers of the diets are not enumerated, but, rather, are residual. By fundamental law of 1867 it is stipulated that "all matters of legislation other than those expressly reserved to the Reichsrath by the present law belong within the power of the Provincial Diets of the kingdoms and countries represented in the Reichsrath and are constitutionally regulated by such Diets." [2]

[1] When the class system of voting for members of the Reichsrath was on the point of being abolished by the law of January 26, 1907, there was raised the question as to whether a similar step should not be taken in respect to provincial elections. It was generally agreed, however, that the absence of an aristocratic upper chamber in the provincial diet renders the class system within the province not wholly undesirable. The provinces were encouraged to liberalize their franchise regulations, but not to abandon the prevailing electoral system. The province of Lower Austria led the way by increasing the membership of its diet from 79 to 127, to be elected as follows: 58 by manhood suffrage throughout the province, 31 by the rural communes, 16 by the large landholders, 15 by the towns, and 4 by the chambers of commerce. Two bishops and the rector of the University of Vienna were continued as members.

[2] Law of December 21, 1867, concerning Imperial Representation, § 12. Dodd, Modern Constitutions, I., 79.

In certain matters, naturally those of an essentially local character, the diet may act with absolute freedom, save that it is within the competence of the Emperor to veto any of its measures. In other matters, such as education and finance, which fall within the range of the Reichsrath's competence, the powers of the diet are limited and subsidiary. A policy very generally pursued has been that of formulating at Vienna general regulations for the entire Empire, leaving to the diets the task of devising legislation of a local and specific character for the execution of these regulations; though it can hardly be maintained that the results have been satisfactory. The diets are not infrequently radical, and even turbulent, bodies, and it has been deemed expedient ordinarily by the Imperial authorities to maintain a close watch upon their proceedings.

**539. The Commune.**— Throughout the Empire the vital unit of local government is the commune. As is true of the province, the commune is an administrative district, and one of its functions is that of serving as an agency of the central government in the conduct of public affairs. Fundamentally, however, the commune is an autonomous organism, rooted in local interest and tradition. As such, it exercises broad powers of community control. It makes provision for the safety of person and property, for the maintenance of the local peace, for the supervision of traffic, for elementary and secondary education, and for a variety of other local interests. Except in respect to affairs managed by the commune as agent of the Imperial government, the local authorities are exempt from discipline at the hand of their superiors, and, indeed, an eminent Austrian authority has gone so far as to maintain that the communes of Austria possess a larger independent competence than do the communes of any other European state.[1]

Except in the case of some of the larger towns, which have special constitutions, the rural and urban communes of the Empire are organized upon the same pattern. The executive authority is vested in an elective committee, or council, presided over by a *Vorsteher*, or burgomaster, chosen from the members of the committee. The *Vorsteher* is not removable by the central authorities, and over his election they possess no control. In certain of the towns the place of the communal committee is taken by a corporation. In every commune there is an assembly (the *Gemeindevertretung*), the members of which are elected for three (in Galicia six) years by all resident citizens who are payers of a direct tax. For the purpose of electing assembly-

[1] J. Redlich, Das Wesen der österreichischen Kommunalverfassung (Leipzig, 1910).

men the voters are divided into three classes, very much as under the Prussian electoral system, and this arrangement, indeed, comprises virtually the only non-democratic aspect of the communal constitution. In Galicia, Styria, and Bohemia there exists also a district assembly, elected for three years (in Galicia six) and made up of representatives of great estates, the most highly taxed industries and trades, towns and markets, and rural communes. A committee of this body, known as the *Bezirksausschuss*, administers the affairs of the district.

# CHAPTER XXVI

## THE GOVERNMENT AND PARTIES OF HUNGARY

### I. The Constitution

**540. Antiquity.**—By reason of both its antiquity and its adaptability to varying conditions, the constitution of the kingdom of Hungary deserves to be considered one of the most remarkable instruments of its kind. Like the fundamental law of England, it is embodied in a maze of ancient statutes and customs, and it is the distinctive creation of a people possessed of a rare genius for politics and government. On the documentary side its history is to be traced at least to the Golden Bull of Andrew II., promulgated in 1222; though that instrument, like the contemporary Great Charter in England, comprised only a confirmation of national liberties that were already old.[1] Under Hapsburg domination, from the early sixteenth century onwards, the fundamental political system and the long established laws of the Hungarian kingdom were repeatedly guaranteed. Much of the time they were, in practice, disregarded; but the nationalistic vigor of the Hungarian people invested them with unlimited power of survival, and even during the reactionary second quarter of the nineteenth century they were but held in suspense.

**541. Texts: the "March Laws."**—In large part, the constitution today in operation took final form in a series of measures enacted by the Hungarian parliament during the uprising of 1848. Thirty-one laws, in all, were at that time passed, revising the organization of the legislative chambers, widening the suffrage, creating a responsible cabinet, abolishing feudal survivals, and modernizing, in general, the institutions of the kingdom. The broad lines which remained were those marked out in the ancient constitutional order; the new measures merely supplemented, revised, and imparted definite form to preexisting laws, customs, and jealously guarded rights. Not all of these inherited constitutional elements, however, were included in the new

[1] There is an interesting comparative study of the *Bulla Aurea* and the Great Charter in E. Hantos, The Magna Carta of the English and of the Hungarian Constitution (London, 1904).

statutes; and to this day it is true that in Hungary, as in Great Britain, a considerable portion of the constitution has never been put into written form. The fate of the measures of 1848 was for a time adverse. The Austrian recovery in 1849 remanded Hungary to the status of a subject province, and it was not until 1867, after seven years of arduous experimentation, that the constitution of 1848 was permitted again to come into operation. The Ausgleich involved as one of its fundamentals a guarantee for all time of the laws, constitution, legal independence, freedom, and territorial integrity of Hungary and its subordinate countries. And throughout all of the unsettlement and conflict which the past half-century has brought in the Austro-Hungarian world the constitution of kingdom and empire alike has stood firm against every shock. The documents in which, chiefly, the written constitution is contained are: (1) Law III. of 1848 concerning the Formation of a Responsible Hungarian Ministry; (2) Law IV. of 1848 concerning Annual Sessions of the Diet; (3) Law XXXIII. of 1874 concerning the Modification and Amendment of Law V. of 1848, and of the Transylvanian Law II. of 1848; and (4) Law VII. of 1885 altering the organization of the Table of Magnates.[1]

[1] The texts of all of the fundamental laws of Hungary at present in operation are printed in G. Steinbach, Die ungarischen Verfassungsgesetze (3d ed., Vienna, 1900). English translations of the more important are in Dodd, Modern Constitutions, I., 93–111. The standard treatise on the Hungarian constitutional system is S. Rádo-Rotheld, Die ungarische Verfassung (Berlin, 1898), upon which is based A. de Bertha, La constitution hongroise (Paris, 1898). In both of these works the Magyar domination in Hungary is regarded with favor. A readable book is A. de Bertha, La Hongrie moderne de 1849 à 1901; étude historique (Paris, 1901). An older treatise, in three volumes, is A. von Virozil, Das Staatsrecht des Königsreichs Ungarn (Pest, 1865–1866). Valuable works of more recent publication include G. Steinbach, Die ungarischen Verfassungsgesetze (Vienna, 1906); A. Timon, Ungarische Verfassungs-und Rechtsgeschichte (2d ed., Berlin, 1908); H. Marczoll, Ungarisches Verfassungsrecht (Tübingen, 1909); and especially G. von Ferdinandy, Staats und Verwaltungsrecht des Königreichs Ungarn und seiner Nebenländer (Hanover, 1909). Worthy of mention is P. Matter, La constitution hongroise, in *Annales de l'École Libre des Sciences Politiques*, July 15, 1889, and April 15, 1890. Excellent discussions for English readers will be found in J. Andrássy, The Development of Hungarian Constitutional Liberty (London, 1908); C. M. Knatchbull-Hugessen, The Political Evolution of the Hungarian Nation (London, 1908); and P. Alden (ed.), Hungary of To-day (London and New York, 1910). The celebration, in 1896, of the thousandth anniversary of the establishment of the Magyars in Europe was made the occasion of the publication of a multitude of more or less popular books devoted, as a rule, to a review of Hungarian national development. Among them may be mentioned: A. Vambéry, Hungary in Ancient and Modern Times (London, 1897); R. Chélard, La Hongrie millénaire (Paris, 1906); and M. Gelléri, Aus der Vergangenheit und Gegenwart des tausendjährigen Ungarn (Budapest, 1896).

## II. The Crown and the Ministry

**542. The Working Executive.**—The constitutional arrangements respecting the executive branch of the Hungarian government are set forth principally in Law III. of 1848 "concerning the Formation of a Responsible Hungarian Ministry." The king attains his position *ipso jure*, by reason of being Emperor of Austria, without the necessity of any distinct act of public law. Within six months of his accession at Vienna he is crowned monarch of Hungary at Budapest, in a special ceremony in which is used the crown sent by Pope Sylvester II. upwards of a thousand years ago to King Stephen. The new sovereign is required to proffer Parliament an "inaugural certificate," as well as to take a coronation oath, to the effect that he will maintain the fundamental laws and liberties of the country; and both of these instruments are incorporated among the officially published documents of the realm. The entire proceeding partakes largely of the character of a contractual arrangement between nation and sovereign.

As in Austria, the powers of the crown are exercised very largely through the ministry. And, by reason of the peculiar safeguards in the Hungarian laws against royal despotism, as well as the all but uninterrupted absence of the king from the dominion, the ministry at Budapest not only constitutes the Hungarian executive in every real sense, but it operates on a much more purely parliamentary basis than does its counterpart at Vienna. "His Majesty," says the law of 1848, "shall exercise the executive power in conformity with law, through the independent Hungarian ministry, and no ordinance, order, decision, or appointment shall have force unless it is countersigned by one of the ministers residing at Budapest." [1] Every measure of the crown must be countersigned by a minister; and every minister is immediately and actually responsible to Parliament for all of his official acts.

**543. Composition and Status of the Ministry.**—The ministry consists of a president of the council, or premier, and the heads of nine departments, as follows: Finance, National Defense, Interior, Education and Public Worship, Justice, Industry and Commerce, Agriculture, the Ministry for Croatia and Slavonia, and the Ministry near the King's Person. The last-mentioned portfolio exists by virtue of the constitutional requirement that "one of the ministers shall always be in attendance upon the person of His Majesty, and shall take part in all affairs which are common to Hungary and the hereditary provinces, and in such affairs he shall, under his responsibility, represent

[1] Law III. of 1848, § 3. Dodd, Modern Constitutions, I., 94.

Hungary." [1] All ministers are appointed by the king, on nomination of the premier. All have seats in Parliament and must be heard in either chamber when they desire to speak. They are bound, indeed, to attend the sessions of either house when requested, to submit official papers for examination, and to give "proper explanations" respecting governmental policies. They may be impeached by vote of a majority of the lower chamber, in which event the trial is held before a tribunal of twelve judges chosen by secret ballot by the upper house from among its own members. Inasmuch, however, as the lower house has acquired the power by a simple vote of want of confidence to compel a cabinet to resign, the right of impeachment possesses in practice small value. The ministry is required to submit once a year to the lower house for its examination and approval a statement of the income and needs of the country, together with an account of the income administered by it during the past twelve months.[2]

## III. Parliament—the Electoral System

**544. The Table of Magnates.**—The Hungarian parliament consists of two houses, whose official designations are *Förendihaz*—Table, or Chamber, of Magnates—and *Képviselöhâz*, or Chamber of Deputies. The upper house is essentially a perpetuation of the ancient Table of Magnates which, in the sixteenth century, began to sit separately as an aristocratic body made up of the great dignitaries of the kingdom, the Catholic episcopate (also, after 1792, that of the Orthodox Greek Church), the "supreme courts," and the adult sons of titled families. The reforms of 1848 left the Chamber untouched, though its composition was modified slightly in 1885.[3] At the session of 1910–1911 it contained 16 archdukes of the royal family (eighteen years of age or over); 15 state dignitaries; 2 presidents of the High Courts of Appeal; 42 archbishops and bishops of the Roman Catholic and Greek Orthodox churches; 13 representatives of the Lutheran, Calvinist, and Unitarian faiths; 236 members of the hereditary aristocracy (i. e., those of the whole number of the nobility who pay a land tax to the amount of at least 6,000 crowns annually); 3 members elected by the provincial diet of Croatia; and 60 life peers, appointed by the crown or chosen by the Chamber of Magnates itself—a total of 387.[4] The membership is

[1] Law III. of 1848, § 13. Dodd, Modern Constitutions, I., 94.

[2] Law III. of 1848, § 37. Ibid., I., 97.

[3] Law VII. of 1885 altering the Organization of the Table of Magnates. Dodd, Modern Constitutions, I., 100–105.

[4] The number is, of course, variable. The old Table of Magnates was a very large body, consisting of more than 800 members.

therefore exceedingly complex, resting on the various principles of hereditary right, *ex-officio* qualification, royal nomination, and election. In practice the upper house is distinctly subordinate to the lower, to which alone the ministers are responsible. Any member may acquire, by due process of election, a seat in the lower chamber, and the privilege is one of which the more ambitious peers are not reluctant to avail themselves. Upon election to the lower house a peer's right to sit in the upper chamber is, of course, suspended; but when the term of service in the popular branch has expired, the prior right is revived automatically.

**545. The Chamber of Deputies: the Franchise.**— By law of 1848, amended in 1874, it is stipulated that the Chamber of Deputies, historically descended from the ancient Table of Nuncios, shall consist of 453 members, "who shall enjoy equal voting power, and who shall be elected in accordance with an apportionment made on the basis of population, territory, and economic conditions." [1] Of the total number of members, 413 are representatives of Hungary proper and 40 are delegates of the subordinate kingdom of Croatia, Slavonia, and Dalmatia. This kingdom possesses its own organs of government, including a unicameral diet which exercises independent legislative power in all internal affairs. Its forty deputies take part in the proceedings at Budapest only when subjects are under consideration which are of common concern to all of the countries of St. Stephen's crown, such as questions pertaining to finance, war, communications, and relations with Austria.[2]

The election of deputies is governed by an elaborate statute of November 10, 1874, by which were perpetuated the fundamentals of the electoral law of 1848. In respect to procedure, the system was further amended by a measure of 1899. Qualifications for the exercise of the suffrage are based on age, property, taxation, profession, official position, and ancestral privileges. Nominally liberal, they are, in actual operation, notoriously illiberal. The prescribed age for an elector is twenty years, indeed, as compared with twenty-four in Austria; but the qualifications based upon property-holding are so exacting that they more than off-set the liberality therein involved. These qualifications—too complicated to be enumerated here—vary according as they arise from capital, industry, occupation, or property-holding. With slight restrictions, the right to vote is possessed without regard to property or income, by members of the Hungarian Academy

[1] Law V. of 1848 concerning the Election of Representatives, § 5. Dodd, Modern Constitutions, I., 105.

[2] On the status of the Croatian kingdom see p. 507.

of Sciences, professors, notaries public, engineers, surgeons, druggists, graduates of agricultural schools, foresters, clergymen, chaplains, and teachers. On the other hand, state officials, soldiers in active service, customs employees, and the police have no vote; servants, apprenticed workingmen, and agricultural laborers are carefully excluded; and there are the usual disqualifications for crime, bankruptcy, guardianship, and deprivation by judicial process. In an aggregate population of approximately 20,000,000 to-day there are not more than 1,100,000 electors.

**546. The Magyar Domination.**—The explanation of this state of affairs is to be sought in the ethnographical composition of Hungary's population. Like Austria, Hungary contains a *mêlange* of races and nationalities. The original Hungarians are the Magyars, and by the Magyar element attempt has been made always to preserve as against the affiliated German and Slavic peoples an absolute superiority of social, economic, and political power. The Magyars occupy almost exclusively the more desirable portion of the country, i. e., the great central plain intersected by the Danube and the Theiss, where they preponderate decidedly in as many as nineteen counties. Clustered around them, and in more or less immediate touch with kindred peoples beyond the borders, are the Germans and the Slavs—the Slovaks in the mountains of the north, the Ruthenes on the slopes of the Carpathians, the Serbs on the southeast, and the Croats on the southwest. When the census of 1900 was taken the total population of Hungary (including Croatia-Slavonia) was 19,254,559. Of this number 8,742,301 were Magyars; 8,029,316 were Slavs; 2,135,181 were Germans; and 397,761 were of various minor racial groups. To put it differently, the Magyars numbered 8,742,301; the non-Magyars, 10,512,258. The fundamental fault of the Hungarian electorate is that it has been shaped, and is deliberately maintained, in the interest of a race which comprises numerically but 45.4 per cent of the country's population.[1] So skillfully, indeed, have electoral qualifications and electoral proceedings been devised in the Magyar interest that the non-Magyar majority has but meager representation, and still less influence, at Budapest.[2] Even in Hungary proper the electorate in 1906 comprised but 24.4 per cent of the male population over twenty years of age; and, despite the disqualifications that have been mentioned one-fourth of the men who vote are officials or employees of the state.

[1] It is but fair to say that in Hungary proper the Magyar percentage in 1900 was 51.4.

[2] Of the 413 representatives of Hungary at Budapest in 1909, but 26 were non-Magyars, and after the elections of June, 1910, but 7.

**547. The Demand for Electoral Reform: the Franchise Reform Bill of 1908.**—In recent years, especially since the Austrian electoral reform of 1906–1907, there has been in Hungary an increasingly insistent demand that the Magyar parliamentary hegemony be overthrown, or at least that there be assured to the non-Magyar peoples something like a proportionate share of political influence. As early as 1905 the recurrence of legislative deadlocks at Budapest influenced Francis Joseph to ally himself with the democratic elements of the kingdom and to declare for manhood suffrage; and in the legislative programme of the Fejérváry government, made public October 28, 1905, the place of principal importance was assigned to this reform. Fearing the swamping of the popular chamber by the Slavs and Germans, the Magyars steadily opposed all change, and for the time being the mere threat on the part of the Government was sufficient to restore tolerable, if not normal, parliamentary conditions. The Wekerle coalition cabinet of 1906 announced electoral reform as one of its projected tasks, but as time elapsed it became apparent that no positive action was likely to be taken. During 1907 and 1908 riotous demonstrations on the part of the disappointed populace were frequent, and at last, November 11, 1908, Count Andrássy, Minister of the Interior, introduced in the Chamber the long-awaited Franchise Reform Bill.

The measure fell far short of public expectation. It was drawn, as Count Andrássy himself admitted, in such a manner as not "to compromise the Magyar character of the Hungarian state." After a fashion, it conceded manhood suffrage. But, to the end that the Magyar hegemony might be preserved, it imposed upon the exercise of the franchise such a number of restrictions and assigned to plural voting such an aggregate of weight that its concessions were regarded by those who were expected to be benefited by it as practically valueless. The essentials of the measure were : (1) citizens unable to read and write Hungarian should be excluded from voting directly, though they might choose one elector for every ten of their number, and each elector so chosen should be entitled to one vote; (2) every male citizen able to read and write Hungarian should be invested, upon completing his twenty-fourth year and fulfilling a residence requirement of twelve months, with one vote; (3) electors who had passed four standards of a secondary school,[1] or who paid yearly a direct tax amounting to at least twenty crowns ($4.16), or who fulfilled various other conditions, should be entitled to two votes; and (4) electors who had completed the course of secondary instruction, or who paid a direct tax of

[1] Equivalent to the completion of one-half of the course of secondary instruction.

100 crowns (approximately $21), should be possessed of three votes. As before, voting was to be oral and public. In the preamble of the measure the cynical observation was offered that "the secret ballot protects electors in dependent positions only in so far as they break their promises under the veil of secrecy." It was announced that the passage of the bill would be followed by the presentation of a scheme for the redistribution of seats.

**548. Rejection of the Bill.**—According to calculations of the *Neue Freie Presse*, the effect of the measure would have been to increase the aggregate body of electors from 1,100,000 to 2,600,000, and the number of votes to something like 4,000,000. The number of persons entitled to three votes was estimated at 200,000; to two votes, at 860,000; to one vote, at 1,530,000; to no vote, at 1,270,000. An aggregate of 1,060,000 persons in the first two classes would cast 2,320,000 votes; an aggregate of 2,800,000 in the last two would cast 1,530,000 votes. The number of persons participating in parliamentary elections would be more than doubled, but political power would remain where it was already lodged. The measure would have operated, indeed, to strengthen the Magyar position, and while the Germans would have profited somewhat by it, the Slavs would have lost largely such power as they at present possess. Based as the scheme was upon a curious elaboration of the educational qualification, it was recognized instantly, both in the kingdom and outside, as an instrument of deliberate Magyar domination. Among the Slavic populations the prevalence of illiteracy is such that the number of persons who could attain the possession of even one direct vote would be insignificant. By the Socialists, and by the radical and Slavic elements generally, the scheme was denounced as a sheer caricature of the universal, equal, and direct suffrage for which demand had been made.

Upon the introduction of the bill parliamentary discord broke out afresh, and through 1909 there was a deadlock which effectually prevented the enactment of even the necessary measures of finance. In January, 1910, the sovereign at last succeeded in securing a new ministry, presided over by Count Hedérváry, and in the programme of this Government the introduction of manhood suffrage was accorded a place of principal importance. June 26, 1910, the Speech from the Throne, at the opening of the newly elected parliament, announced that a franchise bill would be submitted "on the basis of universal suffrage and in complete maintenance of the unitary national character of the Hungarian state." Various circumstances co-operated, however, to impose delay and, despite the sovereign's reiterated interest in the reform, no action as yet has been taken. The Hungarian

franchise remains the most illiberal and the most antiquated in Europe. The racial situation seems utterly to preclude the possibility of a reform that will be in all respects satisfactory; indeed, it seems almost to preclude the possibility of reform at all. Yet, that the pressure will be continued until eventually there shall be an overhauling of the present inadequate system can hardly be doubted.[1]

**549. Electoral Procedure.**—Elections are conducted in each town or *comitat* (county) by a central electoral committee of at least twelve members, chosen by the municipal council of the town or by the general council of the *comitat*. The list of voters in each district is drawn up by a sub-committee of this body. When an election is to be held, the Minister of the Interior fixes, thirty days in advance, a period of ten days during which the polling must be completed. As in Great Britain, the elections do not take place simultaneously, and a candidate defeated in one constituency may stand, and possibly be successful, in another. All polling within a particular town or *comitat*, however, is concluded within one day. Candidates may be nominated by any ten electors of the district, and candidacies may be declared until within thirty minutes of the hour (eight o'clock A. M.) for the polling to begin.

Voting is everywhere public and oral. Each elector, after giving his name and establishing his identity, simply proclaims in a loud voice the name of the candidate for whom he desires to have his vote recorded. If no candidate obtains an absolute majority, the central committee fixes a date (at least fourteen days distant) for a second polling, on which occasion the contest lies between the two candidates who at the first balloting polled the largest number of votes. Prior to a law of 1899 defining jurisdiction in electoral matters, Hungarian elections were tempestuous, and not infrequently scandalous. Beginning with the elections of 1901, however, electoral manners have shown considerable improvement; though ideal conditions can hardly be realized until oral voting shall have been replaced by the secret

[1] On the question of the Hungarian suffrage see S. Aberdam, La crise hongroise, in *Revue Politique et Parlementaire*, Oct. 10, 1909, and Les récentes crises politiques en Hongrie, in *Revue des Sciences Politiques*, May–June and July–Aug., 1912; G. Louis-Jaray, Le suffrage universel en Hongrie, in *Questions Diplomatiques et Coloniales*, February 16, 1909; R. Henry, La crise hongroise, ibid., June 1, 1910; J. Mailath, Les élections générales hongroises, ibid., Aug. 16, 1910, and The Hungarian Elections, in *Contemporary Review*, Oct., 1910; F. de Gerando, Le radicalisme hongroise, in *Revue Politique et Parlementaire*, July, 1911; A. Duboscq, La réforme électorale en Hongrie, in *Questions Diplomatiques et Coloniales*, July 1, 1912; S. Huszadik, La Hongrie contemporaine et le suffrage universel (Paris, 1909); and B. Auerbach, Races et nationalités en Autriche-Hongrie (2d ed., Paris, 1910).

ballot.[1] Any elector who has attained the age of twenty-four, is a registered voter, and can speak Magyar (the official language of Hungarian parliamentary proceedings) is eligible as a candidate. Deputies receive a stipend of 4,800 crowns a year, with an allowance of 1,600 crowns for house rent.

**550. Parliamentary Organization and Procedure.**—The national parliament assembles in regular session once a year at Budapest. Following a general election, the Chamber of Deputies meets, under the presidency of its oldest member, after a lapse of time (not exceeding thirty days) fixed by the royal letters of convocation. The Chamber of Magnates being convoked by the crown at the same date, all members repair to the royal palace to hear the Speech from the Throne, which is delivered by the king in person or by an especially appointed royal commissioner.[2] The lower chamber then passes upon the validity of the election of its members, though by law of 1899 the actual exercise of this jurisdiction is committed in large part to the Royal High Court.[3] The president and vice-president of the Chamber of Magnates are appointed by the king from the members of that house; the secretaries are elected by the house from its own members, by secret ballot. The lower house elects, from its members, all of its officials—a president, two vice-presidents, and a number of secretaries. The presidents of the two houses are chosen for the entire period of the parliament; all other officials are chosen annually at the beginning of a session.

Each house is authorized, at its first annual session after an election, to adopt an order of business and to make the necessary regulations for the maintenance of peace and propriety in its deliberations. The president, with the aid of sergeants-at-arms, is charged with the strict enforcement of all such rules. Sittings of the two houses are required to be public, but spectators who disturb the proceedings may be excluded. The maximum life of a parliament was raised, in 1886, from three years to five. It is within the power of the king, however, not only to extend or to adjourn the annual session, but to dissolve the lower chamber before the expiration of the five-year period. In the event of a dissolution, orders are required to be given for a national election, and these orders must be so timed that the new parliament may be assembled within, at the most, three months after the dissolution. And there is the further requirement that, in the event of a dis-

[1] Seatus Viator, Corruption and Reform in Hungary: a Study of Electoral Practice (London, 1911).

[2] King Francis Joseph I. has been absent upon this important occasion but once since 1867. Apponyi, in Alden, Hungary of To-day, 166.

[3] Ibid., 166–175.

solution before the budget shall have been voted for the ensuing year, the convocation of the new parliament shall be provided for within such a period as will permit the estimates for the succeeding year to be considered before the close of the current year.

**551. The Powers of Parliament: the Parliamentary System.**—In the Hungarian constitutional system Parliament is in a very real sense supreme. The king can exercise his prerogatives only through ministers who are responsible to the lower chamber, and all arrangements pertaining to the welfare of the state fall within the competence of the legislative branch. Within Parliament it is the Chamber of Deputies that preponderates. Aside from the king and ministry, it alone enjoys the power of initiating legislation; and the opposition with which the Chamber of Magnates may be disposed to meet its measures invariably melts away after a show of opinion has been made. By a simple majority vote in the lower chamber a minister may be impeached for bribery, negligence, or any act detrimental to the independence of the country, the constitution, individual liberty, or property rights. Trial is held before a tribunal composed of men chosen by secret ballot by the Chamber of Magnates from its own members. For the purpose thirty-six members in all are required to be elected. Of the number, twelve may be rejected by the impeachment commission of the lower house, and twelve others by the minister or ministers under impeachment. Those remaining, at least twelve in number, try the case. Procedure is required to be public and the penalty to be "fixed in proportion to the offense." [1]

The statement which has sometimes been made that the parliamentary system operates to-day in the kingdom of Hungary in a fuller measure than in any other continental country requires qualification. Nominally, it is true, an unfavorable vote in the Deputies upon a Government measure or action involves the retirement of a minister, or of the entire cabinet, unless the crown is willing to dissolve the Chamber and appeal to the country; and no Government project of consequence can be carried through without parliamentary approval. Practical conditions within the kingdom, however, have never been favorable for the operation of parliamentarism in a normal manner. In the first place, the parliament itself is in no wise representative of the nation as a whole. In the second place, the proceedings of the body are not infrequently so stormy in character that for months at a time the essential principles of parliamentarism are hopelessly subverted. Finally, and most fundamental of all, at no period in the

[1] Law III. of 1848 concerning the Formation of a Responsible Hungarian Ministry, §§ 33–34. Dodd, Modern Constitutions, I., 97.

kingdom's history have there been two great parties, contending on fairly equal terms for the mastery of the state, each in a position to assume direction of the government upon the defeat or momentary discomfiture of the other. From 1867 to 1875, as will appear, there was but one party (that led by Deâk) which accepted the Compromise, and hence could be intrusted with office; and from 1875 to the present day there has been but one great party, the Liberal, broken at times into groups and beset by more or less influential conservative elements, but always sufficiently compact and powerful to be able to retain control of the government. Under these conditions it has worked out in practice that ministries have retired repeatedly by reason of decline of popularity, internal friction, or request of the sovereign, and but rarely in consequence of an adverse vote in Parliament.

## IV. Political Parties

**552. The Question of the Ausgleich.**— Throughout half a century the party history of Hungary has centered about two preponderating problems, first, the maintenance of the Compromise with Austria and, second, the preservation of the political ascendancy of the Magyars. Of these the first has been the more fundamental, because the ascendancy of the Magyars was, and is, an accomplished fact and upon the perpetuation of that ascendancy there can be, among the ruling Magyars themselves, no essential division. The issue upon which those elements of the population which are vested with political power (and which, consequently, compose the political parties in the true sense) have been always most prone to divide, is that of the perpetuation and character of the Ausgleich. To put it broadly, there have been regularly two schools of opinion in respect to this subject. There have been the men, on the one hand, who accept the arrangements of 1867 and maintain that by virtue of them Hungary, far from having surrendered any of her essential interests, has acquired an influence and prestige which otherwise she could not have enjoyed. And there have been those, on the other hand, who see in the Ausgleich nothing save an abandonment of national dignity and who, therefore, would have the arrangement thoroughly remodelled, or even abrogated outright. Under various names, and working by different methods, the parties of the kingdom have assumed almost invariably one or the other of these attitudes.

**553. Formation of the Liberal Party.**—As has been pointed out, the Compromise was carried through the Hungarian parliament in 1867 by the party of Deák. Opposed to it was the Left, who favored the

maintenance of no union whatsoever with Austria save through the crown. The first ministry formed under the new arrangement, presided over by Count Andrássy, was composed of members of the Deák party, and at the national elections of 1869 this party obtained a substantial, though hard-won, majority. In 1871 Andrássy resigned to become the successor of Count Beust in the joint ministry of foreign affairs at Vienna, and two years later Deák himself, now an aged man, withdrew from active political life. There followed in Hungary an epoch of political unsettlement during the course of which ministries changed frequently, finances fell into disorder, and legislation was scant and haphazard. The Deák party disintegrated and, but for the fact that the Left gradually abandoned its determination to overthrow the Ausgleich, the outcome might well have been a constitutional crisis, if not war. As it was, when, in February, 1875, the leader of the Left, Kálman Tisza, publicly acknowledged his party's conversion to the Austrian affiliation, the fragments of the Deák party amalgamated readily with the Left to form the great Liberal party by which the destinies of Hungary have been guided almost uninterruptedly to the present day. Except for the followers of Kossuth, essentially irreconcilable, the Magyars were now united in the support of some sort of union with Austria, and most of them were content for the present to abide by the arrangement of 1867. Before the close of 1875 Tisza was established at the head of a Liberal cabinet, and from that time until his fall, in March, 1890, he was continuously the real ruler of Hungary.

**554. The Liberal Ascendancy: Tisza, Szápáry, Wekerle, and Bánffy.** —The primary policy of Tisza was to convert the polyglot Hungarian kingdom into a centralized and homogeneous Magyar state, and to this end he did not hesitate to employ the most relentless and sometimes unscrupulous means. Nominally a Liberal, he trampled the principles of liberalism systematically under foot. To the disordered country, however, his strong rule brought no small measure of benefit, especially in respect to economic conditions. He supported faithfully the Compromise of 1867; but when, in 1877, the commercial treaty between the two halves of the monarchy expired he contrived to procure increased advantages for Hungary, and among them the conversion of the Austrian National Bank into a joint institution of the two states. Opposition to the Tisza régime arose from two sources principally, i. e., the Kossuth party of Independence, which clung still to the principles of 1848, and the National party, led by the brilliant orator Count Albert Apponyi, distinguishable from the Independence group, on the one hand, by its provisional acquiescence

in the Ausgleich and from the Liberals, on the other, by its still more enthusiastic advocacy of Magyarization. At Vienna, Tisza was regarded as indispensable; but growing discontent in Hungary undermined his position and March 13, 1890, he retired from office.

With the fall of Tisza there was inaugurated a period of short ministries whose history it would be unprofitable to attempt to recount in detail. The Liberal party continued in control, for there had appeared no rival group of sufficient strength to drive it from power. But the rise of a series of issues involving the relations of church and state injected into the political situation a number of new elements and occasioned frequent readjustments within the ministerial group. The ministry of Count Szápáry, which succeeded that of Tisza was followed, November 21, 1892, by that of Dr. Sandor Wekerle, and it, in turn, after a number of the religious bills had been passed, was succeeded, January 11, 1895, by a cabinet presided over by Baron Bánffy. At the elections of 1896 the Liberals were overwhelmingly triumphant, acquiring in the lower chamber a majority of two to one. The Nationalist contingent was reduced from 57 to 35.

**555. The Era of Parliamentary Obstructionism.**—The period covered by the Bánffy ministry (January, 1895, to February, 1899) was one of the stormiest in Hungarian parliamentary history. At the close of 1897 the decennial economic agreement with Austria came automatically to an end, and despite its best efforts the Government was unable to procure from Parliament an approval of a renewal of the arrangement. Through two years successively the existing agreement was extended provisionally for twelve months at a time. It was only during the ministry of Széll, who took office in February, 1899, that a renewal was voted, covering the period to 1907. In Hungary there is no constitutional provision equivalent to Section 14 of the constitution of Austria, but during 1897–1899 the utter breakdown of legislation at Budapest drove Premier Bánffy to a policy of government by decree very similar to that which was at the same time being employed at Vienna. The Government had all of the while a substantial majority, but the obstructionist tactics of the Independence group, the Apponyi Nationalists, and the Clericals were of such a nature that normal legislation was impossible. Under the régime of Széll (February, 1899, to May, 1903), who was a survivor of the old Deák group, constitutionalism was rehabilitated and the Liberals who had been alienated by Bánffy's autocratic measures were won back to the Government's support. Nationalist obstruction likewise diminished, for the primary object of Apponyi's followers had been to drive Bánffy from power.

The brief ministry of Count Khuen-Hedérváry (May 1 to September 29, 1903) was followed by a ministry presided over by Count István [Stephen] Tisza, son of Kálman Tisza, premier from 1875 to 1890. The principal task of the younger Tisza's ministry was to effect an arrangement whereby the Hungarian army, while remaining essentially Hungarian, should not be impaired in efficiency as a part of the dual monarchy's military establishment. During parliamentary consideration of this subject obstruction to the Government's proposals acquired again such force that, under the accustomed rules of procedure, no action could be taken. November 18, 1904, the opposition shouted down a Modification of the Standing Orders bill, designed to frustrate obstruction, and would permit no debate upon it; whereupon, the president of the Chamber declared the bill carried and adjourned the house until December 13, and subsequently until January 5, 1905. The opposition commanded now 190 votes in a total of 451. When the date for the reassembling arrived members of the obstructionist groups broke into the parliament house and by demolishing the furniture rendered a session for the time impossible. In disgust Tisza appealed to the country, only to be signally defeated. The Government carried but 152 seats. The Kossuth party of Independence alone carried 163; the Liberal dissenters under Andrássy got 23; the Clerical People's party, 23; the Bánffy group, 11; and the non-Magyar nationalities, 8. Tisza sought to retire, but not until June 17, 1905, would the sovereign accept his resignation.

**556. The Government's Partial Triumph.**—Incensed by the prolonged, and in many respects indefensible, character of the parliamentary deadlock, Francis Joseph resolved to establish in office an essentially extra-constitutional ministry which should somehow contrive to override the opposition, and likewise to set on foot a movement looking toward the revolutionizing of Hungarian parliamentary conditions by the introduction of manhood suffrage. Under the ministry of Baron Fejérváry, constituted June 21, 1905, there was inaugurated a period of frankly arbitrary government. Parliament was prorogued repeatedly, and by censorship of the press, the dragooning of towns, and the dismissal of officers the Magyar population was made to feel unmistakably the weight of the royal displeasure. For awhile there was dogged resistance, but in time the threat of electoral reform took the heart out of the opposition. Outwardly a show of resistance was maintained, but after the early months of 1906 the Government may be said once more to have had the situation well in hand. Two events of the year mentioned imparted emphasis to the profound change of political conditions which the period of conflict had produced. The

first was the establishment, under the premiership of the Liberal leader Dr. Wekerle, of a coalition cabinet embracing a veritable galaxy of Hungarian statesmen, including Francis Kossuth, Count Andrássy, and Count Apponyi. The second was the all but complete annihilation, at the national elections which ensued, of the old Liberal party, and the substitution for it, in the rôle of political preponderance, of the Kossuth party of Independence. The number of seats carried by this rapidly developing party was 250, or more than one-half of the entire number in the Chamber.

**557. The Parliamentary Conflict Renewed.**— The Wekerle cabinet entered office pledged to electoral reform, although in the subject it in reality cherished but meager interest. In 1908, as has been related, it was impelled by popular pressure to submit a new electoral scheme; [1] but that scheme was conceived wholly in the Magyar interest and did not touch the real problem. It very properly failed of adoption. Meanwhile the ministry fell into hopeless disagreement upon the question of whether Hungary should consent to the renewal of the charter of the Austro-Hungarian Bank (to expire December 31, 1910) or should hold out for the establishment of a separate Hungarian Bank, and, April 27, 1909, Premier Wekerle tendered his resignation. At the solicitation of the sovereign he consented to retain office until a new ministry could be constituted, which, in point of fact, proved to be until January 17, 1910. Added to the problem of the Bank was an even more vexatious one, that, namely, of the Magyarization of the Hungarian regiments. The extremer demands in the matter of Magyarization emanated, of course, from the Independence party, though upon the issue the party itself became divided into two factions, the extremists being led by Justh and the more moderate element by Kossuth. The coalition was disrupted utterly; the Wekerle ministry dragged on simply because through many months no other could be brought together to take its place. The year 1909 passed without even the vote of a budget.

January 17, 1910, Count Hedérváry succeeded in forming a cabinet, and there ensued a lull in the political struggle. At the elections of June, the Government—representing virtually the revived Liberal party—carried 246 seats, while the two wings of the Independence party secured together only 85. The Clericals were reduced to 13 and the non-Magyars to 7. Under the leadership of István Tisza there was organized, at the beginning of 1910, a so-called "National Party of Work," which by the emphasis which it laid upon its purpose of practical achievement commended itself to large elements of the

[1] See p. 495.

nation. By the Hedérváry government it was announced that the franchise would be reformed in such a manner as to maintain, without the employment of the plural vote, the historical character of the Magyar state; but the bitterness of Magyar feeling upon the subject continued to preclude all possibility of action. The embarrassments continually suffered by the Hedérváry ministry reached their culmination in the winter of 1911–1912, at which time the relations between Austria and Hungary became so strained that Emperor Francis Joseph threatened to abdicate unless pending difficulties should be adjusted. The question of most immediate seriousness pertained to the adoption of new regulations for the military establishment, but the electoral issue loomed large in the background. The retirement of the Hedérváry cabinet, March 7, 1912, and the accession of a ministry presided over by Dr. de Lukacs affected the situation but slightly. The new premier made it clear that he would labor for electoral reform, and issue was joined with him squarely upon this part of his programme by the aristocracy, the gentry, the Chamber of Magnates, and all the adherents of Andrássy, Apponyi, and Kossuth, with the deliberately conceived purpose of frightening the Government, and especially the Emperor-King, into an abandonment of all plans to tamper with existing electoral arrangements. During the earlier months of the ministry efforts of the premier to effect a working agreement with the forces of opposition were but indifferently successful.[1]

## V. The Judiciary and Local Government

**558. Law and Justice.**—The law of Hungary, like that of England, is the product of long-continued growth. It consists fundamentally of the common law of the mediæval period (first codified by the jurist Verböczy in the sixteenth century), amplified and modernized in more recent times, especially since the reforms of 1867, so that what originally was little more than a body of feudal customs has been transformed into a comprehensive national code. Hungarian criminal law, codified in 1878, is recognized to be the equal of anything of the kind that the world possesses. Since 1896 there has been in progress a codification of the civil law, and the task is announced to be approaching completion. There are numerous special codes, pertaining to commerce, bankruptcy, and industry, whose promulgation from time to time has marked epochs in the economic development of the nation.

The lower Hungarian tribunals, or courts of first instance, comprise

[1] For a brief account of Hungarian party politics to 1896 see Lowell, Governments and Parties, II., 152–161. For references to current periodicals see p. 497.

458 county courts, with single judges, and 76 district courts, with two or more judges each. Both exercise jurisdiction in civil and criminal cases; but the jurisdiction of the county courts in civil cases extends only to suits involving not more than 1,200 crowns, while in criminal cases these tribunals are not competent to impose punishment exceeding a single year's imprisonment. The district courts serve as courts of appeal from the county courts. Of superior courts there are fourteen—twelve "royal tables," or courts of appeal, a Supreme Court of Justice at Agram, and a Royal Supreme Court at Budapest. The twelve contain, in all, 200 judges; the Royal Supreme Court contains 92. All judges are appointed by the king. Once appointed, they are independent and irremovable. Only Hungarian citizens may be appointed, and every appointee must have attained the age of twenty-six, must be of good moral character, must be familiar with the language of the court in which he is to serve, and must have passed the requisite legal examinations. Salaries vary from 3,840 to 10,000 crowns. Supreme administrative control of the judicial system is vested in the Minister of Justice. The sphere of his authority is regulated minutely by parliamentary statute. In the main, he supervises the judges, attends to the legal aspects of international relations, prepares bills, and oversees the execution of sentences.

**559. Local Government: the County.**—The principal unit of local government in Hungary is the county. The original Hungarian county instituted by St. Stephen about the year 1000, was simply a district, closely resembling the English county or the French department, at the head of which the king placed an officer to represent the crown in military and administrative affairs. Local self-government had its beginning in the opposition of the minor nobility to this centralizing agency, and in periods of royal weakness the nobles usurped a certain amount of control, first in justice, later in legislation, and finally in the election of local officials, which in time was extended legal recognition. At all points the county became substantially autonomous. Indeed, by 1848 Hungary was really a confederation of fifty-two counties, each not far removed from an aristocratic republic, rather than a centralized state. For a time after 1867 there was a tendency toward a revival of the centralization of earlier days. In 1876 laws were enacted which vested the administration of the county in a committee composed in part of members elected within the county, but also in part of officials designated by the crown; and a statute of 1891 went still further in the direction of bureaucratic centralization. More recently, however, the county has undergone a slight measure of democratization.

Exclusive of Croatia-Slavonia, there are in Hungary to-day 63 rural counties and 36 urban counties or towns with municipal rights. In Croatia-Slavonia the numbers are 8 and 4 respectively. The urban counties are in reality municipalities and are essentially separate from the rural counties in which they are situated. The governmental system of the county comprises a council of twenty, composed half of members chosen by the electors for six years and half of persons who pay the highest taxes, together with an especially appointed committee which serves as the local executive. At the head of the assembly is the *föispân*, or lord lieutenant, appointed by the crown. Legally, the counties may withhold taxes and refuse to furnish troops, but there is no popular representation in the true sense in the county governments. The franchise is confined to the very restricted parliamentary electorate. The subject races and the working classes are unrepresented and the real possessors of power are the Magyar landowners.

**560. Croatia, Slavonia, and Dalmatia.**—To the kingdom of Hungary proper are attached certain *partes adnexæ* which enjoy a large measure of political autonomy. Dalmatia, united to Hungary at the beginning of the twelfth century, belongs *de jure* to Hungary and *de facto* to Austria; Croatia and Slavonia belong both *de jure* and *de facto* to Hungary.[1] Croatia and Slavonia, as Hungarian dominions, have always possessed a peculiar status. They are inalienable portions of the kingdom, and in all that pertains to war, trade, and finance they are on precisely the same footing as any other part of the state. In other matters, however, i. e., in religion, education, justice, and home affairs generally, they enjoy a wide range of independent control. The administration of common affairs is vested in the Hungarian ministry, which must always contain a minister with the special function of supervision of Croatian interests. In the parliament at Budapest Croatia-Slavonia is represented by 40 members (sent from its own diet) in the Chamber of Deputies and three members in the Chamber of Magnates. These arrangements exist in virtue originally of an agreement concluded between the Magyars and the Croats in 1868, and they are closely analogous to the relationships established by the Compromise of the previous year between Hungary and Austria. The compact of 1868 was renewed upon several occasions prior to

[1] Until 1848 the grand-principality of Transylvania also enjoyed a considerable measure of autonomy. In 1848 it was united with Hungary. In 1849 it regained its ancient independence, but in 1867 it was again joined with Hungary. By legislation of 1868 and 1876 it was fully incorporated in the kingdom, 75 seats being awarded it in the Chamber of Deputies at Budapest in lieu of its provincial diet, which was abolished.

1898, since which time it has been intermittently under process of revision. Among the Croats there has long been insistent demand for its fundamental modification. The charge, in general, is that as at present administered the arrangement operates all but exclusively to the benefit of the Hungarians.[1] The Wekerle coalition ministry of 1906 promised a redress of grievances, but none was forthcoming, and in more recent years, especially 1907–1908, riots and other anti-Magyar demonstrations have been not uncommon in the territories.

The local Croatian-Slavonian diet is a unicameral body consisting of 90 deputies elected by districts, and of dignitaries (ecclesiastics, prefects of counties, princes, counts, and barons) to the number of not more than half of the quota of elected members. The executive consists of the three departments of Interior and Finance, Culture and Education, and Justice. At the head of each is a chief, and over them all presides an official known as the *Banus*. The *Banus* is appointed by the crown on the nomination of the premier. He is *ex-officio* a member of the Chamber of Magnates, and it is his function to supervise all matters of administration in the provinces, under the general direction of the Croatian minister, who constitutes the vital tie between the central government at Budapest and the dependent territories. Local government is administered in eight rural and four urban counties.[2]

[1] Under the agreement 44 per cent of the Croatian-Slavonian revenue is retained for local needs and the remaining 56 per cent is devoted to common expenditures of the kingdom upon the army, public works, and the national debt. It is alleged, among other things, that this apportionment is unjust, and, furthermore, that the Hungarian authorities systematically divert local funds to national uses.

[2] An English version of the statute of 1868 regulating the status of Croatia-Slavonia is printed in Drage, Austria-Hungary, 767–783. For extended discussions of the subject see Drage, *op. cit.*, Chap. 11; Geosztanyi, in P. Alden (ed.), Hungary of To-day, Chap. 11; G. Horn, Le Compromis de 1868 entre la Croatie et la Hongrie (Paris, 1907); G. de Montbel, La condition politique de la Croatie-Slavonie dans la monarchie austro-hongroise (Toulouse, 1909); and R. Gonnard, Entre Drave et Save; études économiques, politiques, et sociales sur la Croatie-Slavonie (Paris, 1911). See also R. Henry, La Hongrie, la Croatie, et les nationalités, in *Questions Diplomatiques et Coloniales*, Aug. 16, 1907; J. Mailath Hongrie et Croatie, ibid., Nov. 1, 1907.

# CHAPTER XXVII

## AUSTRIA-HUNGARY: THE JOINT GOVERNMENT

**561. The Ausgleich.**—The unique political relation which subsists to-day between the Empire of Austria and the kingdom of Hungary rests upon the Ausgleich, or Compromise, of 1867, supplemented at certain points by agreements of more recent date. The fundamental terms of the arrangement, worked out by the Emperor Francis Joseph, Deák, and Baron Beust, were incorporated in essentially identical statutes enacted by the Hungarian Parliament and the Austrian Reichsrath December 21 and 24 of the year mentioned. Between the demand of Hungary, on the one hand, for independence (save only in respect to the crown), and that of Austria, on the other, for the thoroughgoing subordination of the Hungarian to an Imperial ministry, there was devised a compromise whose ruling principle is that of dualism rather than that of either absolute unity or subordination. Under the name Austria-Hungary there was established a novel type of state consisting of an empire and a kingdom, each of which, retaining its identity unimpaired, stands in law upon a plane of complete equality with the other. Each has its own constitution, its own parliament, its own ministry, its own administration, its own courts. Yet the two have but one sovereign and one flag, and within certain large and important fields the governmental machinery and public policy of the two are maintained in common. The laws which comprise the basis of the arrangement are the product of international compact. They provide no means by which they may be amended, and they can be amended only in the manner in which they were adopted, i. e., by international agreement supplemented by reciprocal parliamentary enactment.[1]

[1] Drage, Austria-Hungary, Chap. 12; H. Friedjung, Der Ausgleich mit Ungarn (Leipzig, 1877); Count Andrássy, Ungarns Ausgleich mit Österreich von Jahre 1867 (Leipzig, 1897); L. Eisenmann, Le compromis austro-hongroise (Paris, 1904). The Austrian and Hungarian texts of the Ausgleich laws, with German versions in parallel columns, are printed in I. Zolger, Der staatsrechtliche Ausgleich zwischen Österreich und Ungarn (Leipzig, 1911). English versions are in Dodd, Modern Constitutions, I., 114–122, and Drage, Austria-Hungary, 744-750, 753–766. In a speech in the Hungarian Chamber November 23, 1903, Count István Tisza sought to dem-

## I. The Common Organs of Government

**562. The Emperor-King.**—Of organs of government which the two dominions possess in common, and by which they are effectually tied together administratively, there are three: (1) the monarch; (2) the ministries of Foreign Affairs, War, and Finance; and (3) the Delegations. The functions and prerogatives of the monarch are three-fold, i. e., those which he possesses as emperor of Austria, those which belong to him as king of Hungary, and those vested in him as head of the Austro-Hungarian union. In theory, and largely in practice, the three sets of relationships are clearly distinguished. All, however, must be combined in the same individual. The law of succession is the same, and it would not be possible for Francis Joseph, for example, to vacate the kingship of Hungary while retaining the Imperial office in the co-ordinated state. But there is a coronation at Vienna and another at Budapest; the royal title reads "Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary"; and the relations of the sovereign with each of the two governments are most of the time conducted precisely as if the other of the two were non-existent. In the capacity of dual sovereign the monarch's principal functions comprise the command of the army and navy,[1] the appointment of heads of the joint ministries, the promulgation of ordinances applying to the states in common, and the giving of assent to measures enacted by the dual legislative body.

**563. The Joint Ministries.**—By the Compromise of 1867 the three departments of administration which most obviously require concentration and uniformity were established upon a basis of community between the two governmental systems. The first of these is the ministry of Foreign Affairs. Neither Austria nor Hungary as such maintains diplomatic intercourse with other powers. Under the direction of the Foreign Minister (known, until 1871, as the Imperial Chancellor) are maintained all relations with foreign governments, through a diplomatic and consular service which represents in every respect

onstrate that, properly, there is no such thing as an Austro-Hungarian Ausgleich—that the two instruments of 1867 are not only of different date but are essentially independent, each being revocable at will by the power by which it was enacted. An able polemic in opposition to the views of Tisza is to be found in F. Tezner, Ausgleichrecht und Ausgleichspolitik (Vienna, 1907). Tezner is an Austrian publicist.

[1] As an illustration of the sensitiveness of the Hungarians in the matter of their Austrian relations the fact may be cited that in 1889, after prolonged effort, an arrangement was procured in accordance with which the joint sovereign, in the capacity of commander of the armed forces, is known as Emperor *and* King, not as Emperor-King.

the monarchy as a whole. Commercial treaties, and treaties stipulating changes of territory or imposing burdens upon the state or upon any part of it, require the assent of both the parliament at Vienna and that at Budapest.

The second common ministry is that of War. With respect to military and naval administration there has been no little misunderstanding, and even ill-feeling, between the two states. The instruments of 1867 vest the supreme command of the army and navy in the joint monarch, yet the armed establishments of the states are maintained on the basis of separate, even if approximately identical, laws, and each is placed under the immediate supervision of a separate minister of national defence. Each country maintains its independent arrangements for the raising of the yearly contingent of recruits. It is only after the quotas have been raised that the dual monarch can exercise his power of appointing officers and regulating the organization of the forces. The authority of the joint war minister is confined largely to matters of secondary importance, such as equipment and the commissariat. Only a close understanding between the ministries at Vienna and Budapest can be depended upon, in the last analysis, to avert an utter breakdown of the admittedly precarious military establishment.[1]

The third common ministry is that of Finance. Each of the two states maintains an independent finance ministry and carries its own budget, because, within certain limitations, the administration of fiscal matters is left to the states in their separate capacities; but questions of joint expenditure, the establishment of the joint budget, and the examination of accounts are committed to a common ministry at Vienna. The powers of the joint minister of finance are, in point of fact, limited. Like the other joint ministers, he may not be a member of either the Austrian or the Hungarian cabinet, nor may he have access to the separate parliaments. His function is essentially that of a cashier. He receives the contributions made by the two states to the common expenses and hands them over to the several departments. Until the annexation of Bosnia and Herzegovina, in 1908, it devolved upon him, by special arrangement, to administer the affairs of these semi-dependent territories.

**564. Fiscal and Economic Arrangements.**—In 1867 it was agreed that the common expenditures of Austria and Hungary should be met,

[1] V. Duruy, L'Armée austro-hongroise, in *Revue de Paris*, Jan. 15, 1909; M. B., L'Armé autrichienne, in *Annales des Sciences Politiques*, May, 1909; Com. Davin, La marine austro-hongroise, in *Questions Diplomatiques et Coloniales*, Aug. 16, 1909.

in so far as possible, from the joint revenues, especially the customs, and that all common outlays in excess of these revenues should be borne by the states in a proportion to be fixed at decennial intervals by the Reichsrath and the Hungarian Parliament. Other joint interests of an economic nature—trade, customs, the debt, and railway policy—were left likewise to be readjusted at ten-year intervals. In respect to contributions, the arrangement hit upon originally was that all common deficits should be made up by quotas proportioned to the tax returns of the two countries, namely, Austria 70 per cent and Hungary 30 per cent. As has been pointed out, the periodic overhauling of the economic relationships of the two states has been productive of frequent and disastrous controversy. The task was accomplished successfully in the law of June 27, 1878, and again in that of May 21, 1887. But the readjustment due in 1897 had the curious fortune not to be completed until the year in which another readjustment was due, i. e., 1907. To the parliamentary contests, at both Vienna and Budapest, by which the decade 1897–1907 was filled some allusion has been made.[1] They involved distinctly the most critical test of stability to which the Ausgleich has been subjected since its establishment. During the period various features of the pre-existing arrangements were continued in force by royal decree or by provisional parliamentary vote, but not until October, 1907, were the economic relation of the two states put once more upon a normal basis. Throughout the decade the Emperor-King exercised repeatedly the authority with which he is invested by law of 1867 to fix the ratio of contributions for one year at a time, when action cannot be had on the part of the legislative bodies. The ratio prevailing during the period was Austria $66\frac{4}{9}$ per cent and Hungary $33\frac{3}{9}$ per cent.

By the agreement of 1907, concluded for the usual ten-year period, the Hungarian quota was raised from the figure mentioned to 36.4 per cent. The customs alliance, established in 1867 and renewed in 1878 and 1887, was superseded by a customs and commercial treaty, in accordance with which each state maintains what is technically a separate customs system, although until the expiration of existing conventions with foreign powers in 1917 the tariff arrangements of the two states must remain identical. Under the conditions which have arisen the customs unity of the monarchy is likely to be disrupted in fact, as already it is in law, upon the advent of the year mentioned. Thereafter commercial treaties with foreign nations will be negotiated in the name of the two states concurrently and will be signed, not merely by the common minister of foreign affairs, but

[1] See pp. 479–481, 502–504.

also by a special Austrian and a special Hungarian representative.[1]

**565. The Delegations: Organization and Sessions.**—All legislative power of the Reichsrath and of the Hungarian Parliament, in so far as it relates to the joint affairs of the states, is exercised by two "delegations," one representing each of the two parliaments. The Austrian Delegation consists of sixty members, twenty of whom are chosen by the Herrenhaus from its own members, and the other forty of whom are elected by the Abgeordnetenhaus in such manner that the deputies from each province designate a number of delegates allotted to them by law. The Hungarian Delegation consists likewise of sixty members, twenty elected by and from the upper, forty by and from the lower, chamber, with the further requirement that there shall be included four of the Croatian members of the Chamber of Deputies and one of the Croatians in the Chamber of Magnates. All members of both Delegations are elected annually and may be re-elected. They must be convoked by the Emperor-King at least once a year. Every device is employed to lay emphasis upon the absolute equality of the two Delegations, and of the states they represent, even to the extent of having the sessions held alternately in Vienna and Budapest. The two bodies meet in separate chambers, each under a president whom it elects, but the proposals of the Government are laid before both at the same time by the joint ministry. In the Austrian Delegation all proceedings are conducted in the German tongue; in the Hungarian, in Magyar; and all communications between the two are couched in both languages. Sittings, as a rule, are public. In the event of a failure to agree after a third exchange of communications there may be, upon demand of either Delegation, a joint session. Upon this occasion there is no debate, but merely the taking of a vote, in which there must participate an absolutely equal number of members of the two organizations.

**566. The Delegations: Powers.**—The members of the common ministry have the right to share in all deliberations of the Delegations and to present their projects personally or through deputies. They must be heard whenever they desire. Each Delegation, on the other hand, has a right to address questions to the joint ministry, or to any one of its members, and to require answers and explanations. By concurrent vote of the two bodies a joint minister may be impeached.

[1] L. Louis-Jaray, Les relations austro-hongroises et le nouveau compromis économique, in *Questions Diplomatiques et Coloniales*, Jan. 16 and Feb. 1, 1908; and Les dispositions économiques du nouveau compromis austro-hongrois, in *Revue Économique Internationale*, March, 1908.

In such a case the judges consist of twenty-four independent and legally trained citizens representing equally the two countries, chosen by the Delegations, but not members thereof. The power is one very unlikely to be exercised; in truth, the responsibility of the ministers to the Delegations is more theoretical than actual.

The functions of the Delegations are severely restricted. They extend in no case beyond the common affairs of the two states; and they comprise little more than the voting of supplies asked by the Government and a certain supervision of the common administrative machinery. Of legislative power, in the proper sense, the two bodies possess virtually none. Practically all law in the dual monarchy takes the form of statutes enacted concurrently by the separate parliaments of Austria and Hungary. The system is not ideal. It involves delay, confusion, and an excess of partisan wrangling. Probably upon no other basis, however, would even the semblance of an Austro-Hungarian union be possible. The existing arrangement operates somewhat to the advantage of Hungary, because the Hungarian Delegation is a body which votes solidly together, whereas the Austrian is composed of mutally hostile racial and political groups.

## II. The Territories of Bosnia and Herzegovina

**567. Annexation of the Provinces, 1908.**—By the Congress of Berlin, in 1878, Austria was authorized, ostensibly in the interest of the peace of Europe, to occupy and administer the neighboring provinces of Bosnia and Herzegovina; and from that date until 1908, although the provinces continued under the nominal sovereignty of the Sultan of Turkey, their affairs were managed regularly by the Austro-Hungarian minister of finance. The eventual absorption of the territories by the dual monarchy was not unexpected, but it came in virtue of a *coup* by which the European world was thrown for a time into some agitation. The revolution at Constantinople during the summer of 1908, accompanied by the threatened dissolution of European Turkey, created precisely the opportunity for which the authorities at Vienna had long waited. October 5, Prince Ferdinand of Bulgaria proclaimed the complete separation of Bulgaria from the Sultan's dominions and assumed the title of king. Two days later Emperor Francis Joseph proclaimed to the inhabitants of Bosnia and Herzegovina the immediate extension of Austro-Hungarian sovereignty over them, alleging that the hour had arrived when they ought to be raised to a higher political level and accorded the benefits of Austro-Hungarian constitutionalism. Among the population of the

annexed provinces the Roman Catholic element approved the union, but the Greek Orthodox and Mohammedan majority warmly opposed it. The people of the provinces are Servian in race, and in the interest of the Servian union which it was hoped at some time to bring about Servia and Montenegro protested loudly, and even began preparations for war. The annexation constituted a flagrant infraction of the Berlin Treaty, and during some weeks the danger of international complications was grave. Eventually, however, on the understanding that the new possessor should render to Turkey certain financial compensation, the various powers more or less grudgingly yielded their assent to the change of status.

**568. The Constitution of 1910: the Diet.**—At the time of the annexation it was promised that the provinces should be granted a constitution. The pledge was fulfilled in the fundamental laws which were promulgated by the Vienna Government February 22, 1910. The constitution proper consists of a preamble and three sections, of which the first relates to civil rights, the second to the composition of the Diet, and the third to the competence of the Diet. Under the terms of the preamble the pre-existing military and administrative arrangements are perpetuated. The civil rights section extends to the annexed provinces the principal provisions of the Austrian constitution in respect to equality before the law, freedom of personal movement, the protection of individual liberty, the independence of judges, freedom of conscience, autonomy of recognized religious communities, the right of free expression of opinion, the abolition of restrictive censorship, the freedom of scientific investigation, secrecy of postal and telegraphic communications, and the rights of association and public meeting.

The second section creates a diet of seventy-two elected and twenty *ex-officio* representatives, fifteen of the latter being dignitaries of the Mohammedan, Servian, Greek Orthodox and Roman Catholic religious communities. The presidential bureau, consisting of one president and two vice-presidents, is appointed annually by the crown at the opening of the session. Each creed is regularly to be represented in the bureau, the presidential office being held by a Servian, a Mohammedan, and a Croat in annual rotation. To be valid, the decisions of the Diet require the presence of a majority of the members, except when ecclesiastical matters are under discussion. Upon such occasions the presence of four-fifths of the Diet, and a two-thirds majority, is required.

The third section excludes from the legislative competence of the Diet all joint Austro-Hungarian affairs and questions pertaining to

the armed forces and to customs arrangements. The Diet is, however, empowered to elect a national council of nine members and to commission it to lay the views of the Diet before the Austro-Hungarian Government. In all other matters, such as civil, penal, police and commercial law, industrial and agrarian legislation, sanitation, communications, taxation, the provincial estimates, the issue and conversion of loans, and the sale or mortgaging of provincial property, the Diet has a free hand. Government measures to be submitted to the Diet require, however, the previous sanction of the Austrian and the Hungarian cabinets, whose assent is also necessary before bills passed by the Diet can receive the sanction of the crown.

**569. The Electoral System.**—Subsequent statutes regulate the franchise and electoral procedure. First of all, the seventy-two elective seats in the Diet are divided among the adherents of the various religious denominations, the Servians receiving 31, the Mohammedans 24, and the Catholic Croats 16. One seat is reserved for a representative of the Jews. The seats are divided, furthermore, into three curiæ, or electoral classes, eighteen being allotted to a first class composed of large landed proprietors and the heaviest taxpayers, twenty to a second class composed of urban electors, and thirty-four to a third class composed of rural electors. The franchise is bestowed upon all subjects of the crown, born in the provinces or possessing one year's residential qualification, who are of the male sex and have completed their twenty-fourth year. In the first of the three classes women possess the franchise, although they may exercise it only by male deputy. Candidates for election must have completed their thirtieth year and must be of the male sex and in full enjoyment of civil rights. Civil and railway servants, as well as public school teachers, are not eligible. In the first and second classes votes are recorded in writing, but in the third, or rural, class, voting, by reason of the large proportion of illiterates, is oral. In the second and third (urban and rural) classes the system of single-member constituencies has been adopted. The provinces are divided into as many Servian, Mohammedan, and Catholic constituencies, with separate registers, as there are seats allotted to the respective creeds. For the Jews all the towns of the two provinces form a single constituency.[1]

[1] The texts of the organic acts of 1910 are printed in K. Lamp, Die Rechtsnatur der Verfassung Bosniens und der Herzegowina vom 17 Februar 1910, in Jahrbuch des Offentlichen Rechts (Tübingen, 1911), V.; L. Geller, Bosnisch-herzegowinische Verfassungs und politische Grundgesetze (Vienna, 1910); and in Zeitschrift für Völkerrecht und Bundesstaatsrecht, IV., No. 5. See also F. Komlössy, Das Rechtsverhältniss Bosniens und des Herzegowina zu Ungarn (Pressburg, 1911).

# PART VII.—THE LOW COUNTRIES

## CHAPTER XXVIII

### THE GOVERNMENT OF HOLLAND

#### I. A Century of Political Development

Geographical juxtaposition, combined with historical circumstance, has determined that between the two modern kingdoms of Holland and Belgium, widely as they differ in many fundamental characteristics, relations should be continuous and close. Both nations have sprung from groups of provinces comprised within the original Low Countries, or Netherlands. Following the memorable contest of the Dutch with Philip II. of Spain, the seven provinces to the north achieved their independence at the beginning of the seventeenth century and, under the name of the United Provinces, built up a system of government, republican in form though in operation much of the time really autocratic, which survived through more than two hundred years. The ten provinces to the south continued under the sovereignty of Spain until 1713, when by the Treaty of Utrecht they were transferred to Austria. They did not attain the status of independent nationality until 1831.

**570. The French Domination, 1793–1814.**—The constitutional arrangements operative in the Holland and Belgium of to-day are to be regarded as products largely of the era of the French Revolution and of the Napoleonic domination. Between 1795 and 1810 both groups of Low Country provinces were absorbed by France, and both were forced quite out of their accustomed political channels. The provinces comprising the Austrian Netherlands were overrun by a French army early in 1793. By decree of October 1, 1795, they were incorporated in the French Republic, being erected into nine departments; and by the Treaty of Lunéville, February 9, 1801, they were definitely ceded by Austria to France.[1] February 1, 1793, the French Republic declared war upon Holland. During the winter of 1794–1795 the Dutch

[1] L. Delplace, La Belgique sous la domination française, 2 vols. (Louvain, 1896); L. de Lanzac de Laborie, La domination française en Belgique, 2 vols. (Paris, 1895).

provinces were occupied, and by the Treaty of The Hague, May 16, 1795, they were erected into a new nationality known as the Batavian Republic, under the protection of France.[1] The constitution of the old republic was thoroughly overhauled and the stadtholderate, long in the possession of the house of Orange, was abolished. To the considerable body of anti-Orange republicans the coming of the French was, indeed, not unwelcome. May 24, 1806, the Batavian Republic was converted by Napoleon into the kingdom of Holland, and Louis Bonaparte, younger brother of the French Emperor, was set up as the unwilling sovereign of an unwilling people. Nominally, the new kingdom was both constitutional and independent; practically, it was an autocracy and a dependency of France. King Louis labored conscientiously to safeguard the interests of his Dutch subjects, but in vain. After four years he abdicated, under pressure; whereupon, July 9, 1810, an Imperial edict swept away what remained of the independent status of the Dutch people and incorporated the kingdom absolutely with France. The ancient provinces were replaced by seven departments; to the Dutch were assigned six seats in the French Senate, three in the Council of State, and twenty-five in the Legislative Body; a lieutenant-general was established at the head of the administrative system; and no effort was spared to obliterate all survivals of Dutch nationality.

**571. The Settlement by the Congress of Vienna: the Constitution of 1815.**—With the overthrow of Napoleon the fate of both the Dutch and the Belgian provinces fell to the arbitrament of the allied powers. In the first Treaty of Paris, concluded May 30, 1814, between the Allies on the one side and France on the other, it was stipulated that the Belgian territories should be joined with Holland and that the whole, under the name of the Kingdom of the United Netherlands, should be assigned to the restored house of Orange, in the person of William I., son of the stadtholder William V. Already, consequent upon the Dutch revolt which followed the defeat of Napoleon at Leipzig, William had been recalled from his eighteen-year exile. December 1, 1813, he had accepted formally the sovereignty of the Dutch provinces, and early in 1814 a constitution had been drawn up and put in operation. The desire of the Allies, particularly of Great Britain, was that there should be brought into existence in the Low Countries a state which should be sufficiently powerful to constitute a barrier to possible aggressions of France upon the north. The union of the Belgian with the Dutch provinces, was intended furthermore, to compensate the

[1] L. Legrand, La révolution française en Hollande: la république batave (Paris. 1894).

Dutch in some measure for their losses of colonial possessions to Great Britain during the war. By the Final Act of the Congress of Vienna, June 9, 1815, and by the second Peace of Paris, November 20 following, the arrangement was ratified. With Holland and the Austrian Netherlands were united in the new state the bishopric of Liège, the duchy of Limburg, and the duchy (henceforth to be known as the grand-duchy) of Luxemburg. The last-mentioned territory, while included in the Germanic Confederation, was bestowed upon the Dutch sovereign in compensation for German principalities ceded by him at this time to Prussia.[1] March 15, 1815, William began his reign under the new régime in Holland, and September 27 following he was crowned at Brussels.

In fulfillment of a promise made his people, King William promulgated, August 24, 1815, a new constitution, drafted by a commission consisting of an equal number of Dutch and Belgian members. The instrument provided for a States-General of two chambers, one consisting of members appointed for life by the crown, the other composed of an equal number (55) of Dutch and Belgian deputies elected

[1] These ceded territories comprised the ancestral domains of the house of Nassau which lay in Germany—Dietz, Siegen, Hadamar, and Dillenburg. The grand-duchy of Luxemburg was joined with the Netherlands by a personal union only, and in its capital, as a fortress of the German Confederation, was maintained a Prussian garrison. William dealt with the territory, however, precisely as if it were an integral part of his kingdom, extending to it the constitution of 1815 and administering its affairs through the agency of Dutch officials. At the time of the Belgian revolt, in 1830, Luxemburg broke away from Dutch rule and there ensued in the history of the grand-duchy an anomalous period during which the legal status of the territory was hotly disputed. In 1839 the Conference of London assigned to Belgium that portion of the grand-duchy which was contiguous to her frontiers and remanded the remainder to the status of an hereditary possession of the house of Nassau. In 1856 a separate constitution was granted the people of the territory, and in 1867, following the dissolution of the old Germanic Confederation, the grand-duchy was declared by an international conference at London to be a sovereign and independent (but neutral) state, under the guaranty of the powers. The connection between Luxemburg and Holland was thereafter purely dynastic. Until the death of William III., in 1890, the king of the Netherlands was also grand-duke of Luxemburg; but with the accession of Queen Wilhelmina the union of the two countries was terminated, by reason of the fact that females were at that time excluded from the throne of the grand-duchy. A law of 1907, however, vested the succession in the princess Marie, eldest daughter of the reigning Grand-Duke William; and upon the death of her father, Feb. 26, 1912, this heiress succeeded to the grand-ducal throne. The head of the state is the grand-duke (or grand-duchess). There is a council of state nominated by the sovereign and a chamber of deputies of 53 members, elected directly by the cantons for six years. The state has an area of but 998 square miles and a population (in 1910) of 259,891. P. Eyschen, Das Staatsrecht des grossherzogtums Luxemburg (Tübingen, 1910).

by the provincial estates. Bills might be rejected, but might not be originated or amended, by this assembly. The suffrage was severely restricted; trial by jury was not guaranteed; the budget was to be voted for a number of years at a time; ministers were declared responsible solely to the king; and, all in all, there was in the new system little enough of liberalism. When the instrument was laid before a Belgian assembly it was overwhelmingly rejected. None the less it was declared in effect, and it continued the fundamental law of the united dominions of William I. until 1830.

**572. The Belgian Revolution, 1830–1831.**—Friction between the Dutch and the Belgians was from the outset incessant. The union was essentially an artificial one, and the honest efforts of the king to bring about a genuine amalgamation but emphasized the irreconcilable differences of language, religion, economic interest, and political inheritance that separated the two peoples. The population of Belgium was 3,400,000; that of Holland but 2,000,000. Yet the voting power of the former in the lower legislative chamber was no greater than that of the latter, and in fact the Dutch were able all the while to maintain in that body a small working majority. Administrative offices were filled, in large part, by Dutchmen, and the attitude quite commonly assumed (in a measure, without doubt, unconsciously) by the public authorities strongly suggested that Holland was the preponderating power and Belgium little more than so much subjugated territory. The upshot was discontent and eventual rebellion. In 1828 the principal political parties of Belgium, the Catholics and the Liberals, drew together in the "Union," the object of which was to bring about the recognition of Belgian independence, or, in the event that this should prove impossible of attainment, the establishment of thoroughgoing Belgian autonomy, with no union with Holland save of a purely personal character through the crown. Inspired by the success of the July Revolution in France, and hopeful of obtaining French assistance, the Belgians in August, 1830, broke into open revolt. After a period of violence, a provisional government at Brussels, October 4, 1830, proclaimed Belgium's independence and summoned a national congress to which was committed the task of drawing up a scheme of government. Aroused by the imminent loss of half of his dominion, King William, after an ineffectual display of military force, offered concessions; and the States-General went so far as to authorize the establishment in the southern provinces of a separate administrative system, such as at one time would have met the Belgian demand. The day for compromise, however, had passed. The Belgian congress voted overwhelmingly for the establishment of an independent mon-

archy, adopted (February 7, 1831) a liberal constitution, and, after offering the throne without avail to the Duke of Nemours, second son of Louis Philippe of France, selected as king the German Prince Leopold of Saxe-Coburg, who, under the title of Leopold I., was crowned July 21 of the same year.

**573. The Independence of Belgium.**—These proceedings involved the overturning of an arrangement which the Allies in 1815 had considered essential to the security of Europe. Several considerations, however,—among them the outbreak of insurrection in Poland,—induced the powers to acquiesce with unexpected readiness in the dissolution of the loose-jointed monarchy. December 20, 1830, a conference of the five principal powers at London formally pronounced in favor of a permanent separation, and when, in August, 1831, a Dutch army crossed the frontier and inflicted upon the Belgians an overwhelming defeat, a French force compelled the invaders to surrender the fruits of their victory and to retire from the country. A treaty of separation was drawn up by the London conference under date of November 25, 1831, under whose terms there were recognized both the independence and the neutrality of the new Belgian monarchy. William of Holland protested and flatly refused to sign the instrument. The British and French governments compelled him outwardly to acquiesce in the agreement, although it was not until April 19, 1839, that he gave it his formal assent. Embittered by his losses and chagrined by the constitutional amendments to which his own people compelled him to submit, he abdicated in 1840 in favor of his son.[1]

**574. Constitutional Revision in Holland.**—After 1831 the constitutional development of Holland and that of Belgium move in separate channels.[2] In Holland the fundamental law of 1815 was retained, but the modifications which have been introduced in it, notably in 1840, 1848, and 1887, have so altered its character as to have made of it an essentially new instrument. The revision of 1840 was forced upon the king by the Liberals, whose position was strengthened by

[1] On the constitutional aspects of Dutch-Belgian history in the period 1815–1840 see Cambridge Modern History, X., Chap. 16 (bibliography, pp. 848–851); D. C. Boulger, History of Belgium, 2 vols. (London, 1909), I.; Stern, Geschichte Europas, IV., Chap. 2. General works of importance include J. B. Nothomb, Essai historique et politique sur la révolution belge, 3 vols. (4th ed., Brussels, 1876); C. White, The Belgian Revolution, 2 vols. (London, 1835); C. V. de Bavay, Histoire de la révolution belge de 1830 (Brussels, 1873); L. Hymans, Histoire politique et parlementaire de la Belgique de 1814 à 1830 (Brussels, 1869); J. J. Thonissen, La Belgique sous le règne de Leopold I^er^, 3 vols. (Louvain, 1861).

[2] For that of Belgium see p. 534.

the fiscal chaos into which the nation had fallen under the previous autocratic régime. The reformers got very much less than they demanded. Instead of the ministerial responsibility and the public control of the finances for which they asked they procured only an arrangement to the effect that the budget should be submitted to the States-General every two years and the colonial balance sheet yearly, together with certain changes of detail, including a curtailment of the civil list and a reduction of the membership of the States-General in consequence of the loss of Belgium. Yet these reforms were well worth while.

During the reign of William II. (1840–1849) the demand for constitutional revision was incessant. The king was profuse in promises, but vacillating. In 1844, and again in 1845, a specific programme of revision failed of adoption. By 1848, however, economic distress and popular discontent had become so pronounced that the sovereign was forced to act. The overthrow of Louis Philippe at Paris, too, was not without effect. March 17 the king named a state commission of five members which was authorized to draft a revision of the constitution, and the resulting instrument, after being adopted in an extraordinary session of the States-General, was promulgated November 3. The revision of 1848 introduced into the Dutch constitutional system many fundamental changes. Instead of being appointed by the crown, members of the upper branch of the States-General were thereafter to be elected by the provincial estates; and in the choice of members of the lower house, direct popular elections were substituted for indirect. The ministers of the king were made responsible to the States-General, and the powers of the legislative body were otherwise increased through the extension of its authority over colonial affairs, provision for a regular annual budget, and, most of all, recognition of the right to initiate and to amend projects of legislation. Constitutional government in Holland may be said virtually to have had its beginning in 1848.

**575. The Constitution To-day.**—Through several decades following the accession of William III., in 1849, the political history of Holland comprises largely a story of party strife, accentuated by the efforts of the various political groups—especially the Liberals, the Conservatives, and the Catholics—to apply in practice the parliamentary system.[1] The death of Prince Alexander, June 21, 1884, occasioned a constitutional amendment to provide for the accession of a female sovereign and the establishment of a regency, and three years later a parliamentary deadlock compelled the king to authorize a general

[1] Cambridge Modern History, XI., Chap. 23.

revision of the fundamental law whereby the number of citizens in possession of the franchise was more than tripled. The constitution of Holland at the present day is the amended instrument of November 6, 1887. It comprises more than two hundred articles, being, indeed, one of the lengthiest documents of its kind in existence. Like most European constitutions, it may be amended by the ordinary legislative organs, though under specially prescribed conditions. The first step in the amending process consists in the adoption by the legislative chambers of a resolution affirming that there is sufficient reason for taking under consideration the amendment or amendments in hand. Following the promulgation of this resolution the chambers are required to be dissolved. The newly elected houses then take up the project for final disposition, and if by a two-thirds vote they adopt it, and if the sovereign assents, it goes into operation.[1]

## II. The Crown and the Ministry

**576. Status of the Sovereign.**—The government of Holland[2] is in form a constitutional, hereditary monarchy. Until 1884 the royal succession was vested exclusively in the direct male line of the house of Orange-Nassau in the order of primogeniture. The death, however, in the year mentioned, of the sole surviving male heir occasioned, as has been stated, an amendment of the constitution authorizing the succession of a female heir, in default of a male; and, upon the death of William III., November 23, 1890, the throne accordingly passed to his only daughter, the present Queen Wilhelmina.[3] In default of a legal heir, the successor to the throne is to be designated by a law presented by the crown and acted upon by a joint meeting of the legis-

[1] Arts. 194–197. Dodd, Modern Constitutions, II., 118. The text of the constitution, in English translation, is printed in Dodd, II., 80–119. An excellent annotated edition of the instrument, in Dutch, is G. L. van den Helm, De Grondwet voor het koningrijk der Nederlanden (The Hague, 1889). An elaborate commentary is contained in J. T. Buijs, De Grondwet, 3 vols. (Arnheim, 1883–1888). One of the best expositions of the Dutch constitutional system is L. de Hartog, Das Staatsrecht des Königreichs der Niederlande (Freiburg, 1886), in Marquardsen's Handbuch, though this work antedates the amendments of 1887. More recent is J. van Hamel, Staats- und Verwaltungsrecht des Königreichs der Niederlande (Hanover, 1910).

[2] The official title is "The Kingdom of the Netherlands." In ordinary usage, however, the term "Holland" is more commonly employed.

[3] Wilhelmina was at the time but ten years of age. Until she attained her majority, August 31, 1898, a regency was exercised by the Queen-Dowager Emma. E. Lemonon, La succession au trône néerlandais, in *Questions Diplomatiques et Coloniales*, December 1, 1908.

lative chambers, each house containing for this purpose double its usual number of members. In the event of the minority or the incapacity of the sovereign a regency is established, and the regent is named by law enacted by the States-General in joint session.[1]

The sovereign, at accession, is installed in a public joint meeting of the two chambers in the city of Amsterdam, and is required to take oath always "to observe and maintain the constitution;" whereupon the members of the chambers solemnly pledge themselves "to do everything that a good and loyal States-General ought to do." The person of the monarch is declared inviolable. For the maintenance of the royal establishment the constitution stipulates that, in addition to the revenue from the crown lands, the sovereign shall be entitled to a yearly income, to be paid out of the national treasury, together with summer and winter residences, the maximum public expenditure upon which, however, is restricted to 50,000 florins a year. At each accession the amount of the annual stipend is fixed by law for the entire reign. William II.'s civil list was 1,000,000 guilders, but at the accession of William III. in 1849 the amount was reduced to 600,000, where it has remained to the present day. The family of Orange is possessed of a large private fortune, most of which was accumulated by William I. from a variety of commercial and industrial ventures. The Prince of Orange, as heir apparent, is accorded by the state an annual income of 100,000 florins, which is increased to 200,000 upon his contracting a marriage authorized by law.

**577. The Ministry.**—Associated with the sovereign is a Council of State, consisting of the Prince of Orange (when above eighteen years of age) and of a variable number of members appointed by the crown. The number of members is at present fourteen. By the terms of the constitution the sovereign is required to submit for discussion in the Council of State all matters to be presented to the States-General, and all general administrative questions of the kingdom and of its colonies and possessions throughout the world.[2] Besides this advisory Council of State there is a Council of Ministers, comprising the heads of nine executive departments established by the sovereign. Nominally the ministers are appointed and dismissed by the crown at will, but actually the parliamentary system has acquired sufficient foothold to impose upon the sovereign a considerable measure of restriction at this point. All decrees and orders must be countersigned by the head of one of the ministerial departments; and it is expressly stipulated that responsibility for all royal acts shall lie with the min-

[1] Arts. 20–21. Dodd, Modern Constitutions, II., 84.
[2] Art. 75. Ibid., II., 94.

isters.[1] The heads of ministerial departments are privileged to occupy seats in both branches of the States-General, but unless elected regularly as members they possess only a deliberative voice in the proceedings of the chamber in which they sit.[2]

**578. The Exercise of Executive Powers.**—Despite the liberalizing tendencies which underlie Dutch constitutional history since 1815, the powers of the crown are still enormous. Executive authority is vested solely in the sovereign and the ministers, and there are not a few acts of importance which the sovereign may perform quite independently. The sovereign exercises supreme control over foreign relations, declares war, concludes and ratifies treaties,[3] confers titles of nobility, appoints to public offices, coins money, grants pardons in cases of penalties imposed by judicial sentence, maintains supreme control over the land and naval forces, settles certain types of disputes arising between provinces, or between provinces and communes or corporations, issues general administrative regulations, recommends projects of law to the States-General, and approves or rejects all measures adopted by that body. The sovereign is, however, in no sense above the law. Many things may not be done at all, save under the authority of a regularly enacted piece of legislation. Dispensations from legal provisions, for example, may be granted by the crown only under the authority of law. In still other respects the sweeping grants of power contained within the constitution are tempered by counterbalancing stipulations. Thus, the sovereign has the right to coin money; but it is also prescribed that "the monetary system shall be regulated by law."[4] And the crown has "supreme control of the colonies and possessions of the kingdom in other parts of the world;" but "the regulations for the conduct of the government in the colonies and possessions shall be established by law."[5]

## III. The States-General and Political Parties

**579. The Chambers: Earlier Electoral Arrangements.**—Legislative power within the kingdom is vested jointly in the sovereign and a States-General, or parliament, of two chambers. The upper chamber

[1] Art. 54. Dodd, Modern Constitutions, II., 90.

[2] Art. 94. Ibid., II., 99.

[3] Save that treaties which provide for modifications of the boundaries of the state, or impose a public pecuniary obligation, or contain any other provision touching legal rights, may not be approved by the crown until after sanction shall have been accorded by the States-General, unless the power has been reserved to the crown by law to conclude such a treaty. Art. 59. Dodd, Modern Constitutions, II., 91.

[4] Art. 61. Ibid., II., 91.

[5] Art. 61. Ibid.

consists of fifty members elected in varying proportions by the "estates," or representative assemblies, of the eleven provinces.[1] The term of office is nine years, and one-third of the members retire triennially. Male citizens who have attained the age of thirty, who are in full control of their property, and who have not been disqualified by judicial sentence, are eligible to membership, provided either that they are among the heaviest payers of direct national taxes or that they hold, or have held, one or more principal public offices designated by law.[2]

The lower chamber consists of one hundred members elected directly by the voters of the kingdom for a term of four years. Under the original constitution of 1815 members of the lower house were chosen by the provincial estates. Direct election was introduced by the constitutional revision of 1848. During several decades the franchise, based upon tax-paying qualifications, was narrowly restricted. After 1870 the Liberals carried on a persistent campaign in behalf of a broader electorate, and by a constitutional amendment of 1887 the franchise was extended to all males twenty-three years of age and over, who are householders paying a minimum house-duty, lodgers who for a time have paid a minimum rent, or who are possessed of "signs of fitness and social well-being." The provisions relating to householders and lodgers alone increased the electorate at a stroke from approximately 100,000 to 300,000. The precise meaning and application of the phrase "fitness and social well-being" were left to be defined by law, and through upwards of a decade political contoversy in Holland centered principally about this question. The coalition Catholic-Conservative ministry of 1888–1891 refused flatly to sanction the enactment of any sort of law upon the subject. In 1893 the Liberal Minister of the Interior, Tak van Poortvliet, brought forward a project whereby it was proposed to put upon the qualifying phrase an interpretation of well-nigh the broadest possible character. A man was to be regarded as fulfilling the educational requirement if he were able to write, and the social requirement if simply he were not a recipient of public charity. By the adoption of this scheme the number of electors would have been raised to something like 800,000, and Holland would have attained a reasonable approximation of manhood suffrage. The Moderate Liberals, the Conservatives, and most of the

[1] The provincial quotas are as follows: South Holland, 10; North Holland, 9; North Brabant and Gelderland, 6 each; Friesland, 4; Overyssel, Groningen, and Limberg, 3 each; Zealand, Utrecht, and Drenthe, 2 each. Prior to the constitutional revision of 1848 members of the upper house were appointed by the king.

[2] Art. 90. Dodd, Modern Constitutions, II., 98.

Catholics opposed the proposition, and the elections of 1894 proved the supporters of the van Poortvliet programme to be in the minority. The total strength of the "Takkians" in the new chamber was 46, of whom 35 were Liberals; that of the "anti-Takkians" was 54, of whom 24 were Catholics.

**580. The Electoral Law of 1896 and the Question of Electoral Reform.**—In the newly constituted ministry it fell to Samuel van Houten, leader of a radical group that had opposed the van Poortvliet project, to prepare an alternative measure. In the notable electoral law of 1896 the compromise proposals of van Houten were definitely accepted, and they constitute the essential features of the electoral system at the present day. Under this arrangement the members of the lower chamber are elected in one hundred single-member districts by male citizens of the age of twenty-five and over, who meet any one of the following qualifications: (1) payment of a direct tax of at least one florin; (2) payment of a minimum rental as householders or lodgers; (3) proprietorship or rental of a vessel of at least twenty-four tons; (4) the earning of a wage or salary varying from 275 to 550 florins a year; (5) investment of one hundred florins in government bonds, or of fifty florins in a savings bank; and (6) the passing of an examination required for entrance upon a public office or upon a private employment. By the reform of 1896 the number of voters in the realm was increased to 700,000.

In 1905 there was created a royal commission of seven members to which was assigned the task of considering and reporting proposals relative to proportional representation, the salaries of members, and other questions of constitutional revision. The Government, however, reserved to itself specifically the right to bring forward proposals relating to the actual extension of the franchise. The report of this commission, submitted late in 1907, recommended, among other things, the introduction of proportional representation and (by a vote of six out of seven) the extension of the franchise to women. These suggestions failed of adoption, but late in 1910 a new commission was appointed, under the presidency of the Conservative premier Heemskerk, and to this body was given power to propose changes in any portion whatsoever of the governmental order. The successful operation of proportional representation in adjoining countries, especially Belgium and Sweden, renders it probable that the system will be adopted ultimately in Holland. The future of woman's suffrage is more problematical. Women already possess the right to vote in the proceedings of the dike associations if they are taxpayers or if they own property adjoining the dikes, and in June, 1908, the Lutheran

Synod gave women the right to vote in ecclesiastical affairs on a footing with men. Since 1894 there has been a National Woman's Suffrage Society, to which was added, in 1906, a Woman's Suffrage League; and women are freely admitted to membership in the political clubs maintained by the adherents of the various parties.

Any male citizen who has attained his thirtieth year, who is in full possession of property, and who has not been disqualified by judicial sentence, is eligible to a seat in the popular chamber. By constitutional provision, members are allowed, in addition to travelling expenses, a salary of 2,000 florins a year; and, under law of May 4, 1889, members of the upper house who do not live in the place of meeting receive a *per diem* of ten florins during the continuance of each session.

**581. The States-General: Organization and Powers.**—The constitution requires that the States-General shall assemble at least once each year and that its regular annual session shall be opened on the third Tuesday in September. The sovereign may convoke an extraordinary session at any time; but regular sessions are not dependent upon the royal summons. The crown possesses the right to dissolve the houses, separately or simultaneously; but a decree of dissolution must contain an order for the election of the new house, or houses, within fourteen days, and for the assembling of the houses within two months.[1] Except in the event of a dissolution, a regular session is required to extend through at least twenty days; but upon the expiration of the twenty-day period the sovereign may terminate the sitting whenever in his judgment "the interests of the state no longer require its continuance."[2] The president of the upper house is appointed by the crown from among the members for the period of one session. The corresponding officer of the lower house is similarly appointed from a list of three members submitted by the chamber. Each house appoints, from non-members, its clerk and such other officials as may be required; each examines the credentials of its newly elected members and renders final verdict upon their validity; and each regulates the details of its own procedure. Except when one-tenth of the members of a chamber request the closing of the doors, or the president deems such a step necessary, sessions are public. Neither house may take action upon any matter unless at least half of its members are present, and final action upon all propositions is taken by an absolute majority of the members present. A portion of the business of the States-General is transacted in joint sessions of the two houses. In joint session the two are regarded as one chamber, under the pres-

[1] Art. 73. Dodd, Modern Constitutions, II., 94.
[2] Art. 103. Ibid., II., 100.

idency of the president of the upper house. For the changing of the order of royal succession or the appointment of an heir to the throne, the constitution requires that the membership of each chamber be doubled. In such an event there is added to the regular members of each house an equal number of extraordinary members, elected in the same manner as the regular members.[1]

In the proceedings of the States-General the lower chamber enjoys a distinct preponderance. The upper chamber, indeed, is commonly regarded as constitutionally the weakest body of its kind in Europe. It possesses neither the power to initiate legislation, general or financial, nor power to amend projects of law. Any measure which comes before it must be accepted or rejected as it stands. Bills may be originated either by the Government or by members of the lower chamber, and it is required that the sovereign shall send all recommendations, whether pertaining to laws or to other matters, to the lower house, in a written message or by committee.[2] The projects of the general financial laws must be presented annually to the lower house in the name of the crown, immediately after the opening of the regular session. No taxes may be levied save by law. In addition to its powers of a purely legislative character, the States-General is authorized to investigate, either as separate chambers or in joint session, the executive conduct of public affairs.[3] Under stipulated conditions, the States-General, by a two-thirds vote, and with the assent of the crown, may amend the constitution.[4]

**582. Political Parties: Election of 1903.**—Since the middle of the nineteenth century political preponderance has alternated irregularly between two principal party groups. One of these is the Liberals, representative especially of the commercial towns, and falling into the two general categories of Moderates and Progressives. The other is the Conservatives, consisting largely of orthodox Protestants, especially the Calvinistic peasantry, and supported, as a rule, by the Catholics. In more recent times the Socialists have made their appearance as a distinct political element, but thus far they have cast in their lot regularly with the Liberals. Between 1871 and 1888 the Liberals were in power continuously; and, after a brief interval covered by a Conservative-Catholic ministry, they regained control and kept it throughout the decade 1891–1901. In 1901 a coalition ministry was created, under the premiership of the Conservative Dr. Kuyper. This lasted until 1903.

In the spring of the year mentioned the lower house rejected

[1] Art. 83. Dodd, Modern Constitutions, II., 96. [2] Art. 110. Ibid., II., 101.
[3] Art. 95. Ibid., II., 99. [4] See p. 523.

an important measure relating to higher education upon whose enactment the Kuyper ministry was determined. The Chamber was dissolved and in June elections were held. Prior to the elections the Chamber contained 58 Ministerialists and 42 anti-Ministerialists (Liberals and Socialists). The opposition elements were far from united. The Socialists insisted upon an immediate amendment of the constitution to provide for universal suffrage; the Progressive Liberals favored only the eventual adoption of such an amendment; the Moderate Liberals were opposed to it altogether. None the less, the result of the elections was to terminate the Conservative majority and to replace it by a slender but indubitable Liberal majority of four. The Conservatives carried 48 seats; the Liberals 45; and the Socialists 7. The Kuyper ministry forthwith resigned.

**583. The Political Situation Since 1909.**—The period from June, 1905, to December, 1907, was covered by the two successive Liberal ministries of Borgesius and De Meester. Each was essentially colorless. Efforts to bring about an extension of the suffrage failed, and during 1907 the Liberal majority virtually disappeared. The upshot was that, February 8, 1908, there was created a new ministry, under Dr. Heemskerk, whose members were drawn from the Conservatives. At the general election of June 11, 1909, the Conservatives recovered supremacy completely. Following the grouping which prevails at the present day, the results of this election were as follows: (1) Anti-Revolutionaries (largely rural Calvinists), 23 members; (2) Historic Christians, 12; (3) Roman Catholics, 25—a total Conservative quota of 60; (4) Free Liberals, 4; Union Liberals, 21; Liberal Democrats, 8; Socialists, 7—a total Liberal contingent of 40. Furthermore, while the Conservatives were compactly organized, the Liberals were divided hopelessly among themselves and quite unable to offer substantial resistance to their opponents. With a majority of 20 in the lower chamber and of 19 in the upper, with a popular vote in excess by 80,000 of that of the Liberals, and with a ministry in office which, if not brilliant, was at least popular, the Conservatives came off from the campaign in a position to maintain through an extended period, so far as may be foreseen, their control of public affairs. Quite the contrary of the contemporary situation in Belgium, the rifts which separate the various Liberal groups tend in Holland to deepen, and the political impotence of Liberalism consequently to be accentuated.[1]

[1] On Dutch political parties see P. Verschave, La Hollande politique; le rôle des catholiques néerlandais depuis dix ans, in *Le Correspondant*, April 10, 1908; Les élections générales et la situation politique aux pays-bas: l'organisation de la campagne électorale, ibid., Nov. 25, 1909; and La Hollande politique; un parti catholique en pays protestant (Paris, 1910).

## IV. The Judiciary and Local Government

**584. Judicial Principles.**—The constitution guarantees various fundamental personal rights, including those of petition, assembly, free speech, and equality before the law in all matters pertaining to the protection of person and property. It likewise undertakes to guarantee the individual against partiality and arbitrariness in the administration of justice. Except in unusual cases, prescribed by law, no one may be taken into custody except upon a warrant issued by a judge, stating specifically the reason for arrest. No one may be removed against his will from the jurisdiction of the tribunal in which he has a right to be tried. General confiscation of the property of a person adjudged guilty may not be imposed as a penalty for any offense. Save in exceptional cases, specified by law, or when in the opinion of the judge public order and morals forbid, the sessions of all courts are required to be public. Judgments must be pronounced in public session. They must be accompanied by a statement of the considerations upon which they are based, and, in criminal cases, by a citation of the specific provisions of law upon which the sentence is founded.[1]

**585. The Courts.**—Justice is administered throughout the kingdom in the name of the crown, and all judicial officers are appointed by the crown. Within the constitution provision is made only for a supreme tribunal known as the High Court (*Hooge Raad*) of the Netherlands, sitting at The Hague. Minor courts exist by virtue of ordinary law. The judges of the High Court, five in number, are appointed by the crown from lists prepared by the lower house of the States-General. The junctions of the High Court are of large importance. On appeal from inferior tribunals it may annul any judicial proceeding, decree, or judgment held by it to be unwarranted by law. It is charged with the duty of seeing that suits are properly tried and decided, and that judicial officials comply with the laws. Inferior judges are appointed normally for life, but under conditions prescribed by law they may be dismissed or relieved of their duties by decision of the High Court. Finally, the High Court constitutes a tribunal before which, upon charges brought by either the sovereign or the lower chamber, members of the States-General, heads of the ministerial departments, governors-general, members of the Council of State, and commissioners of the crown in the provinces, may be prosecuted upon charge of offenses committed in office. Such prosecution

[1] Arts. 149–161. Dodd, Modern Constitutions, II., 110–112.

may be instituted either during an official's tenure of office or after his retirement.[1]

Of inferior tribunals there are three grades. At the bottom are the cantonal courts, 106 in number, consisting each of a single judge and taking cognizance of claims under 200 guilders, breaches of police regulations, and other cases of a minor nature. Next are the district courts, 23 in number, each consisting of three judges and exercising within the *arrondissement* jurisdiction in matters of more weight. Still above the district tribunals are five courts of appeal, each comprising a body of three judges. Trial by jury is unknown in Holland.

**586. Local Government: the Province.**—The constitution of the Netherlands is somewhat peculiar in that it prescribes at length not merely the form and character of the national government, but also the arrangements that shall prevail respecting the governments of the provinces and the communes throughout the kingdom. Of provinces there are eleven; of communes, 1,123. The importance of the province is enhanced by the fact that the nation has sprung from a pure confederation, the original autonomy of the federated provinces having never been wholly obliterated under the present centralized régime. Each province has its own representative body, or "provincial estates," a unicameral assembly whose members are chosen directly for six years by all inhabitants of the province who are entitled to vote for members of the lower house of the States-General. Half of the members retire every three years. The number of members varies, according to the population of the province, from eighty in South Holland to thirty-five in Drenthe. The assembly meets at least twice a year. Its powers are extensive, although it can perform no legislative act without the assent of the crown. It enacts ordinances, levies taxes, prepares and submits to the sovereign an annual budget, controls in certain respects the municipalities, and elects those members of the upper branch of the States-General to which the individual province is entitled.

For the exercise of executive authority within the province there are two agencies. The provincial assembly appoints from its own members a committee of six, known as the "deputed states," to which, in accordance with conditions fixed by law, the daily administration of affairs is intrusted. Furthermore the sovereign appoints and establishes in each province a commissioner who is charged with the execution of royal orders and with a general supervision of the acts of the local authorities. This royal commissioner presides over the deliberations of both the provincial estates and the committee of six, possessing

[1] Arts. 162–166. Dodd, Modern Constitutions, II., 112–113.

in the committee the power also of voting. He is distinctly the chief magistrate of the province, and at the same time the effective tie between the central and the provincial governments.[1]

**587. Local Government: the Commune.**—In all essential respects the government of the Dutch communes is prescribed by the national constitution, with the result that that government is characterized by uniformity no less thoroughgoing than is the communal government of France. Within each commune is a council of from seven to forty-five members elected directly by the people of the commune for a term of six years under franchise arrangements identical with those obtaining in the election of members of the provincial estates, save that no one, although otherwise qualified to vote for communal councillors, may exercise the privilege unless he contributes a minimum amount yearly to the communal rates. One-third of the members of the council retire every two years. The council meets publicly as frequently as business requires. It enacts by-laws, levies taxes, supervises education, and represents the interests of the commune, if occasion arises, before the sovereign, the States-General, and the provincial estates. All of its legislative acts are liable to veto by the crown, and the municipal budget requires regularly the approval of the committee of the provincial estates. Executive authority within the commune is vested in a burgomaster, or mayor, appointed by the sovereign for a term of six years, and a board of two to six *wethouders*, or aldermen, elected by and from the council. The burgomaster presides in the council and, as a representative of the royal authority, may suspend for a period of thirty days any measure enacted.[2]

[1] Arts. 127–141. Dodd, Modern Constitutions, II., 105–108.
[2] Arts. 142–148. Ibid., II., 108–110.

# CHAPTER XXIX

## THE GOVERNMENT OF BELGIUM

### I. The Constitution—the Crown and the Ministry

**588. The Constitution: Liberalism and Stability.**—The constitution of the kingdom of Belgium was framed, consequent upon the declaration of Belgian independence October 4, 1830, by a national congress of two hundred elected delegates. It was promulgated February 7, 1831, and July 21 of the same year the first independent Belgian sovereign, Leopold I., took oath to observe and maintain it. Circumstances conspired to give the instrument a pronouncedly liberal character. Devised in the midst of a revolution brought on principally by the autocratic rule of King William I., it is, and was intended to be, uncommonly explicit in its definition of the royal prerogative. There were Belgians in 1831, indeed, who advocated the establishment of a republic. Against such a course various considerations were urged, and with effect; but the monarchy which was set up, owing clearly its existence to popular suffrage, is of the strictly limited, constitutional type. "All powers," it is asserted in the fundamental law, "emanate from the people." [1] The principles of liberalism are the more in evidence by reason of the fact that the framers of the constitution deliberately accepted as models the French instruments of 1791 and 1830 and were likewise influenced profoundly by their admiration for the constitutional system of Great Britain.

A striking testimony to the thoroughness with which the work was done, and to the advanced character of the governmental system established, is the fact that the text of the Belgian fundamental law endured through more than half a century absolutely unchanged, and, further, that when in our own generation the task of amendment was undertaken not even the most ardent revisionists cared to insist upon more than the overhauling of the arrangements respecting the franchise. Leopold I. (1831–1865), and Leopold II. after him (1865–1909), frankly recognized the conditional basis of the royal tenure and, although conspicuously active in the management of public affairs,

[1] Art. 25. Dodd, Modern Constitutions, I., 130.

afforded by their conduct slight occasion for popular criticism or disaffection. Even the revolutionary year 1848 passed without producing in Belgium more than a mere ripple of unrest. In 1893 the constitution was amended to provide for universal male suffrage, and in 1899 a further amendment instituted a system of proportional representation. Otherwise, the instrument stands to-day virtually as it was put into operation in 1831. It need hardly be remarked that, in Belgium as elsewhere, the written constitution does not by any means contain the whole of the actually operative political system. Numerous aspects of parliamentarism, and of other well-established governmental forms and practices, depend for their sanction upon the conventions, rather than upon the law, of the constitution; but they are none the less real and enduring.

**589. Content and Amendment.**—The written constitution of Belgium, like that of Holland, is comprehensive in scope. It comprises an extended bill of rights; a detailed definition of the framework of the national executive, legislative, and judicial departments; special provisions relating to finance and the army; and an enumeration of the principles underlying the provincial and communal administration. It contains a total of 139 articles, of which eight, being temporary in character, are inoperative. The process of amendment is identical with that which prevails in Holland. Upon declaration by the legislative chambers to the effect that a specified amendment is desirable, the chambers are *ipso facto* dissolved. If the chambers thereupon elected approve the proposition by a two-thirds vote, and the sovereign accords it his sanction, it is declared adopted.[1]

[1] Art. 131. Dodd, Modern Constitutions, I., 146. The text of the constitution of Belgium, in English translation, is printed in Dodd, Modern Constitutions, I., 126–148, and in the *Annals of the American Academy of Political and Social Science*, May, 1896, Supplement (translation by J. M. Vincent). French texts of the constitution and of important laws will be found in F. Larcier, Code politique et administratif de la Belgique (2d ed., Brussels, 1893). The standard commentary is J. J. Thonissen, La constitution belge (3d ed., Brussels, 1879). Works of value relating to the amendments of 1893–1894 are C. Thiebault et A. Henry, Commentaire législatif des articles revisés de la constitution belge (Brussels, 1894), and Beltjens, La constitution belge revisée (Liège, 1895). The best treatises on the Belgian constitutional system are P. Errera, Das Staatsrecht des Königreichs Belgien (Tübingen, 1909), and Traité de droit public belge: droit constitutionnel, droit administratif (Paris, 1908), and O. Orban, Le droit constitutionnel de la Belgique, 3 vols. (Liège, 1906–1911). An older but excellent work is A. Giron, La droit public de la Belgique (Brussels, 1884). A convenient elementary book on the subject is F. Masson et C. Wiliquet, Manuel de droit constitutionnel (7th ed., Brussels, 1904). A useful volume is E. Flandin, Institutions politiques de l'Europe contemporaine (2d ed., Paris, 1907), I.

**590. The Crown.**—Kingship in Belgium is hereditary in the direct male line in the order of primogeniture. In default of male descendants, the king, with the consent of the legislative chambers, may name his successor.[1] A king or heir to the throne attains his majority at the age of eighteen. In the event of a minority, or of the incapacity of the sovereign, the two houses are required to meet in a single assembly for the purpose of making provision for a regency. The powers of regent may not be conferred upon two or more persons jointly, and during the continuance of a regency no changes may be made in the constitution.[2] If by chance the throne should fall wholly vacant, the choice of a sovereign would devolve upon the legislative chambers, specially re-elected for the purpose, and deliberating in joint session. The civil list of the crown is fixed at the beginning of a reign. That of Leopold II., as established by law of December 25, 1865, was 3,300,000 francs, and that of the present sovereign, Albert I., is the same.

**591. The Ministers and the Parliamentary System.**—The Council of Ministers consists of ten heads of executive departments. These, together with a variable number of ministers without portfolio, comprise the Council of State, an advisory body convened by the crown as occasion requires. All ministers are appointed, directly or indirectly, and all may be dismissed, by the king. All must be Belgian citizens, and no member of the royal family may be tendered an appointment. Ministers are all but invariably members of one or the other of the legislative houses, principally of the House of Representatives.[3] Whether members or not, they are privileged to attend all sessions and to be heard at their own request. The houses, indeed, possess the right to demand their attendance. But no minister may vote, save in a house of which he is a member.[4]

Belgium is one of the few continental states in which the parliamentary system is thoroughly operative. At no point is the constitution more explicit than in its stipulation of the responsibility of ministers. Not only is it declared that the king's ministers are responsible; it is stipulated that "no decree of the king shall take effect unless it is countersigned by a minister, who, by that act alone, renders himself

[1] This privilege was conferred by an amendment (Art. 61) adopted September 7, 1893.

[2] Arts. 60, 79–85. Dodd, Modern Constitutions, I., 136, 138–139.

[3] The minister of war, regularly an active military official, has been usually not a legislative member. Aside from this one post, however, the custom of selecting ministers exclusively from the chambers has been followed almost as rigorously in Belgium as in Great Britain. And so largely are the ministers taken from the lower house that the Senate not infrequently has no representative at all in the cabinet.

[4] Arts. 86–91. Dodd, Modern Constitutions, I., 139–140.

responsible for it"; also that "in no case shall the verbal or written order of the king relieve a minister of responsibility." [1] The House of Representatives is vested with the right to accuse ministers and to arraign them before the Court of Cassation; and the king may not pardon a minister who has been sentenced by this tribunal, save upon request of one of the two legislative chambers. A ministry which finds that it cannot command the support of a majority in the House of Representatives has the right to determine upon the dissolution of either of the houses, or of both. If after a general election there is still lack of harmony, the ministry, as would be the procedure in a similar situation in Great Britain, retires from office, the sovereign calls upon an opposition party leader to assume the premiership and to form a cabinet, and the remainder of the ministers are selected from the dominant parties by this official, in consultation with the king. By reason of the multiplicity of party groups in Belgium, the king is apt to be allowed somewhat wider latitude in the choice of a premier than is possible in Great Britain.[2]

**592. The Exercise of Executive Powers.**—The powers of the executive, exercised nominally by the king, but actually by the ministry, are closely defined in the constitution; and there is the stipulation, unusual in European constitutions, that the king shall possess no powers other than those which the constitution, and the special laws enacted under the constitution, confer explicitly upon him.[3] Under the conditions that have been explained, the king appoints all officials who are attached to the general administrative and foreign services, but other officials only in so far as is expressly authorized by law. He commands the forces by land and sea, declares war, and concludes peace. He negotiates treaties, with the limitation that treaties of commerce and treaties which impose a burden upon the state, or place under obligation individual Belgian citizens, take effect only after receiving the approval of the two houses; and with the further condition that no cession, exchange, or acquisition of territory may be carried through save by warrant of a law. The king promulgates all legislative measures, and he is authorized to issue all regulations and decrees necessary for the execution of the laws. In theory he possesses the power of the veto, but in the Belgian, as in parliamentary governments generally, there is no occasion for the actual exercise of this power. The king convokes, prorogues, and dissolves the cham-

[1] Arts. 63–64, 89. Dodd, Modern Constitutions, I., 137, 140.

[2] Dupriez, Les Ministres, I., 210–230; O. Kerchove de Denterghem, De la responsabilité des ministres dans le droit public belge (Paris, 1867).

[3] Art. 78. Dodd, Modern Constitutions, I., 138.

bers; though the provisions of the constitution relating to the legislative sessions are so explicit that the crown is left small discretion in the matter. The king, finally, is authorized to remit or to reduce the penalties imposed by the tribunals of justice, to coin money, to confer titles of nobility (which must be purely honorary), and to bestow military orders in accordance with provisions of law.[1]

## II. The Houses of Parliament—the Electoral System

**593. The Senate.**—The Belgian parliament consists of two houses, both elective and both representative of the nation as a whole. The upper house, or Senate, is composed of 112 members, chosen for a term of eight years. With respect to the method of their election, the members fall into two categories. Under constitutional provision, as amended by law of September 7, 1893, a number of senators equal to one-half the number of members of the House of Representatives is elected directly by the voters, in proportion to the population of the several provinces. The electorate which returns these senators is identical with that which returns the deputies, and by law of December 29, 1899, the principle of proportional representation, as applied in elections of the lower chamber, is applied to senatorial elections within each province. A second group of members consists of those elected by the provincial councils, to the number of two for each province having fewer than 500,000 inhabitants, of three for each province having from 500,000 to 1,000,000 inhabitants, and of four for each province having more than 1,000,000 inhabitants. The proportion of senators elected directly by the people is approximately three-fourths, being at present 76 to 26. Prior to the amendment of 1893 all members of the Senate were chosen by the same electorate which chose the members of the lower chamber. Inasmuch as only payers of direct taxes to the amount of 2,000 francs a year were eligible as senators, the upper house represented almost exclusively the interests of wealth. By vesting in the provincial councils the choice of a portion of the senators, who should be eligible regardless of tax-paying qualifications, it was hoped to impart to the Senate a more broadly representative character. At the same time the tax qualification for popularly elected members was reduced by a third. It may be noted that there is a possibility of a small non-elective element in the Senate. According to the terms of the constitution, the sons of the king, or if there be none, the Belgian princes of the branch of the royal family designated to succeed to the throne, shall be by right senators at the age of eighteen, though

[1] Arts. 66–67. Dodd, Modern Constitutions, I., 137–138.

without deliberative vote until the age of twenty-five.[1] Prior to his accession to the throne, in 1909, the present sovereign Albert I., nephew and heir-presumptive of Leopold II., was entitled to a senatorial seat. There is at present no representative of royalty who is eligible.

All elective senators must be Belgian citizens and Belgian residents, at least forty years of age, and in the unrestricted enjoyment of civil and political rights. Senators elected by the provincial councils are subject to no property qualifications,[2] but those elected directly by the people must be drawn from either payers of as much as 1,200 francs of direct national taxes or proprietors or lessees of Belgian real estate of an assessed income of at least 12,000 francs. In provinces, however, where the number of eligible persons falls short of the proportion of one for every 5,000 inhabitants, the list is completed by the addition of such a number of the heaviest tax-payers of the province as may be necessary to establish this proportion.[3] Save passes on the national railways, senators receive no salary or other emolument.

**594. The House of Representatives: Earlier Electoral Arrangements.** —The lower legislative chamber consists of deputies elected directly by the voters of the kingdom. The number of seats is determined by law, under the general provision that it may not exceed the proportion of one for 40,000 inhabitants. Prior to 1899 it was 152; to-day it is 186. The term is four years. Half of the membership retires every two years, though in the event of a dissolution the house is entirely renewed.[4] The qualifications which the constitution requires of deputies are those of citizenship, residence in Belgium, attainment of the age of twenty-five, and possession of civil and political rights. Deputies receive an honorarium of 4,000 francs a year, together with free transportation upon all state and concessionary railways between the places of their respective residences and Brussels, or any other city in which a session may be held.

The Belgian electoral system at the present day is noteworthy by reason of three facts: (1) it is based upon the principle of universal manhood suffrage; (2) it embraces a scheme of plural voting; and (3) it provides for the proportional representation of parties. Under the original constitution of 1831 the franchise, while not illiberal for the time, was restricted by property qualifications of a somewhat sweeping character. Deputies were elected by those citizens only who paid yearly a direct tax varying in amount, but in no instance of less than

[1] Art. 58. Dodd, Modern Constitutions, I., 135.

[2] They may not be, and may not have been within two years preceding their election, members of the assembly which returns them.

[3] Art. 56. Dodd, Modern Constitutions, I., 135.

[4] This is true also of the Senate.

twenty florins. In 1848 there was enacted a series of electoral laws whereby the property qualification was reduced to a uniform level of twenty florins and the number of voters was virtually doubled. With this arrangement the Liberals were by no means satisfied, and agitation in behalf of a broader electorate was steadily maintained. As early as 1865 the Liberal demands were actively re-enforced by those of organizations of workingmen, and in 1870 the Catholic ministry found itself obliged to sanction a considerable extension of the franchise in elections within the provinces and the communes. After 1880 the brunt of the electoral propaganda was borne by the Socialists, and the campaign for constitutional revision was directed almost solely against the 47th article of the fundamental law, in which was contained the original stipulation respecting the franchise. Since 1830 the population of Belgium had all but doubled, and there had been in the country an enormous increase of popular intelligence and of economic prosperity. That in a population of 6,000,000 (in 1890) there should be an electorate of but 135,000 was a sufficiently obvious anomaly. The broadly democratic system by which members of the French Chamber of Deputies and of the German Reichstag were elected was proclaimed by the revisionists to be the ideal which it was hoped to realize in Belgium.

**595. The Electoral Reform Act of 1893.**—In 1890 the Catholic ministry, recognizing in part the justice of the demand, and preferring, if there were to be revision, to carry it through, rather than to incur the risk of having it carried through by a radical cabinet, yielded to the pressure and consented to the formal consideration of the electoral question upon the floors of the two chambers. Three years of intermittent, but animated, discussion ensued. At length, in May, 1892, the chambers were able to agree upon the primary proposition that some sort of revision was necessary. Then came the dissolution which is required by the constitution in such a case, followed by a general election. The newly chosen chambers, which for the purpose in hand comprised virtually a constituent convention, entered upon their task later in the same year. In both the Catholics maintained a majority, but by reason of the requirement of a two-thirds vote for the adoption of a constitutional amendment, they were none the less obliged to rely upon the Liberals for a certain amount of support. In the scheme of revision which was finally adopted all parties had some substantial share.

No fewer than fourteen distinct programmes of reform were laid before the chambers.[1] The Conservatives, in general, desired the

[1] It will be remembered that for the purpose of considering constitutional amendments the chambers meet in joint session.

introduction of a system based upon occupation combined with the payment of taxes; the majority of the Liberals sought to secure special recognition for electors of approved capacity—in brief, an educational qualification; the Radicals inside, and the Socialists outside, Parliament carried on a relentless propaganda in behalf of universal, direct, and equal suffrage. The rejection in committee (April, 1893) of a plan of universal suffrage occasioned popular demonstrations which required the calling out of the military, and when it was proposed to stop with a reduction of the age limit for voters there were threats of a universal industrial strike. In the end all elements wisely receded from their extreme demands and it was found possible to effect agreement upon a compromise. A Catholic deputy—Albert Nyssens, professor at the University of Louvain—came forward with a scheme for manhood suffrage, safeguarded by the plural vote, and September 3, 1893, the plan was adopted.[1]

**596. The Franchise To-day.**—By the terms of the law of 1893, one vote is allotted to every male Belgian citizen who has attained the age of twenty-five years, who is in unrestricted enjoyment of his civil and political rights, and who has been resident at least one year in a given commune. There is nothing whatsoever in the nature of either an educational or a property qualification. Having conferred, however, upon the mass of male citizens the right to vote, the law proceeds to define the conditions under which a citizen may be entitled to two votes, or even three. One supplementary vote is conferred upon (1) every male citizen over thirty-five years of age, married or a widower, with legitimate offspring, and paying to the state as a householder a tax of not less than five francs, unless exempt by reason of his profession, and (2) every male citizen over twenty-five years of age owning real estate to the assessed value of 2,000 francs, or possessing income from land corresponding to such valuation, or who for two years has derived a minimum interest return of one hundred francs a year from Belgian funds, in the form of either government bonds or obligations of the Belgian government savings-bank. Two supplementary votes are conferred upon citizens over twenty-five years of age who (1) hold a diploma from an institution of higher learning, or an indorsed certificate testifying to the completion of a course of secondary education of the higher grade; or (2) occupy or have occupied a public office, hold or have held a position, practice or have practiced a profession, which presupposes the knowledge imparted in secondary instruction of the higher grade—such

[1] The Nyssens scheme was brought to the attention of the Belgian people through the medium of a pamphlet entitled "Le suffrage universel tempéré."

offices, positions, and professions to be defined from time to time by law.[1]

What, therefore, the law of 1893 does is, broadly, to confer upon every male citizen one vote and to specify three principal conditions under which this basal voting power may be augmented. As the head of a family, the citizen's suffrage may be doubled. By reason of his possession of property or of capital, it likewise may be doubled. On the basis of a not unattainable educational qualification, it may be tripled. Under no circumstances may an individual be entitled to more than three votes. The plural vote of Belgium differs, therefore, from that of Great Britain, not only in that it is based upon a variety of qualifications of which property ownership is but one, but also in that there is fixed an absolute and reasonably low maximum of votes. It is of interest further to observe that voting is declared by the Belgian constitution to be obligatory. Failure to appear at the polls, without adequate excuse made to the election officer, is a misdemeanor, punishable by law. The citizen may, if he likes, evade the law by depositing a blank ballot. But he must deposit a ballot of some sort.[2]

## III. Parties and Electoral Reform since 1894—Parliamentary Procedure

**597. The Adoption of Proportional Representation, 1899.**—The first election held under the law of 1893, that of October 14, 1894, demonstrated that by that measure the number of electors had been multiplied almost exactly by ten. The total number of voters was now 1,370,000; the number of votes cast was 2,111,000. Contrary to general expectation, the election gave the Catholics an overwhelming majority in the lower chamber. They obtained 105 seats, the Socialists 29, and the Liberals only 18. The elections of 1896 and

[1] Art. 47. Dodd, Modern Constitutions, I., 132–133.

[2] On the earlier aspects of Belgian electoral reform see J. Van den Heuvel, De la revision de la constitution (Brussels, 1892); L. Arnaud, La revision belge, 1890–1893 (Paris and Brussels, 1894); La réforme electorale en Belgique, in *Annales de l'École Libre des Sciences Politiques*, July, 1894; E. Van der Smissen, L'État actuel des partis politiques en Belgique, ibid., Sept., 1898. An important work by a leading socialist and a deputy from Brussels is L. Bertrand, Histoire de la démocratie et du socialisme en Belgique depuis 1830, 2 vols. (Brussels and Paris, 1906–1907). Mention may be made also of E. Vandervelde et J. Destree, Le socialisme en Belgique (2d ed., Paris, 1903) and the older work of E. de Lavcleye, Le parti clérical en Belgique (Brussels, 1874). A careful study is J. Barthélemy, L'organisation du suffrage et l'expérience belge (Paris, 1912). In 1910–1911 the number of parliamentary electors was 1,697,619, of whom 993,070 had one vote, 395,866 had two votes, and 308,683 had three votes.

1898 gave the Catholics a still more pronounced preponderance. At the beginning of 1899 the parties of the opposition could muster in the lower house only forty votes and in the upper only thirty-one. The Liberal party was threatened with extinction. Its popular strength, however, was still considerable, and from both Liberals and Socialists there arose an insistent demand for the adoption of a scheme whereby the various parties should be accorded seats in the law-making bodies in proportion to their popular vote.

The idea of proportional representation was not at this time in Belgium a new one. It had been formulated and defended in the lower chamber as early as 1866. Since 1881 there had been maintained a national reform organization whose purpose was in part to propagate it; and it is worthy of note that at the time of the revision of 1893 the ministry, led by the premier Beernaert, had advocated its adoption.[1] In 1895 the principle was introduced in a statute relating to communal elections. Following a prolonged contest, which involved the retirement of two premiers, a bill extending the plan to parliamentary elections was pressed upon the somewhat divided Catholic forces and, December 29, 1899, was enacted into law. Under the provisions of this measure deputies and the popularly elected senators continue to be chosen within the arrondissement by *scrutin de liste*. Within each arrondissement the seats to be filled are distributed among the parties in proportion to the party strength as revealed at the polls, the allotment taking place in accordance with the list system formulated by Victor d'Hondt, of the University of Ghent. The number of deputies elected in an arrondissement varies from three to twenty-one. When an elector appears at the polls he presents his official "summons" to vote and receives from the presiding officer one, two, or three ballot papers according to the number of votes to which he is entitled. He takes these papers to a private compartment, marks them, places them in the ballot-box, and has returned to him his letter of summons stamped in such a way as to show that he has fulfilled the obligation imposed upon him by law. The candidates of the various parties are presented in lists, and the task of the elector is merely to indicate his approval of one list for each of the votes to which he is entitled. This he does by pencilling white spots contained in the black squares at the head of the lists or against the names of individual candidates. He may pencil only the spot

[1] Another interesting proposal in 1893 was that at the discretion of the crown a legislative measure might be submitted to direct popular vote. By reason of the fear that such a scheme would vest in the crown an excess of power the experiment was not tried.

at the head of a list, thereby approving the order in which the candidates have been arranged by the party managers; or, by marking spaces opposite names of candidates, he may indicate his preference for a different order.

**598. How Seats Are Allotted.**—The process of the apportionment of seats may be illustrated by a hypothetical case. Let it be assumed that within a given arrondissement four lists of parliamentary candidates have been presented and that at the polls an aggregate vote of 33,000 is distributed as follows: Catholics, 16,000; Liberals, 9,000; Socialists, 4,500; and Christian Democrats, 3,500. Let it be assumed, further, that the arrondissement is entitled to eight seats. The total number of votes for each list is divided successively by the numbers 1, 2, 3, 4, etc., and the results are arrayed thus:

| | *Catholic List*[1] | *Liberal List* | *Socialist List* | *Christian Democrat List* |
|---|---|---|---|---|
| Divided by 1..... | 16,000 | 9,000 | 4,500 | 3,500 |
| Divided by 2..... | 8,000 | 4,500 | 2,250 | 1,750 |
| Divided by 3..... | 5,333 | 3,000 | 1,500 | 1,166 |
| Divided by 4..... | 4,000 | 2,250 | 1,125 | 875 |
| Divided by 5..... | 3,200 | 1,800 | 900 | 700 |

The eight highest numbers (eight being the number of seats to be filled) are then arranged in order of magnitude as follows:

16,000
9,000
8,000
5,333
4,500
4,500
4,000
3,500

The lowest of these numbers, 3,500, becomes the common divisor, or the "electoral quotient." The number of votes cast for each list is divided by this quotient, and the resulting numbers (fractions being disregarded) indicate the quota of seats to which each of the parties is entitled. In the case in hand the results would be:

16,000 divided by 3,500=4 Catholic seats
9,000 divided by 3,500=2 Liberal seats
4,500 divided by 3,500=1 Socialist seat
3,500 divided by 3,500=1 Christian Democrat seat

[1] In point of fact, the lists as published and as placed before the voter are indicated merely by number.

**599. The Making up of the Lists.**—Lists of candidates are made up, and the order in which the names of candidates appear is determined, by the local organizations of the respective parties. In order to be presented to the electorate a list must have the previously expressed support of at least one hundred electors. A candidate may stand as an independent, and his name will appear in a separate "list," providing his candidacy meets the condition that has been mentioned; and it is within the right of any organization or group, political or non-political, to place before the electorate a list. The power of the organization responsible for the presentation of a list to fix the order of candidates' names is not a necessary feature of the proportional system and it has been the object of much criticism, but it is not clear that serious abuse has arisen from it. Candidates whose names stand near the top of the list are, of course, more likely to be elected than those whose names appear further down, for, under the prevailing rules, all votes indicated in the space at the head of a list form a pool from which the candidates on the list draw in succession as many votes as may be necessary to make their individual total equal to the electoral quotient, the process continuing until the pool is exhausted. Only by receiving a large number of individual preferential votes can a candidate be elected to the exclusion of a candidate whose name precedes his.[1]

**600. The Elections of 1906, 1908, and 1910.**—The first parliamentary election following the adoption of the proportional system—that of May, 1900—left the Catholics with a larger preponderance in the lower chamber than they had dared expect.[2] None the less, the effect of the change was distinctly to revive the all but defunct Liberal party, to stimulate enormously the aspirations of the Socialists, and,

[1] Valuable books dealing with proportional representation in Belgium are G. Lachapelle, La représentation proportionnelle en France et en Belgique (Paris, 1911); F. Goblet d'Alviella, La représentation proportionelle en Belgique, and La représentation proportionelle intégrale (Paris, 1910); Barriéty, La représentation proportionelle en Belgique (Paris, 1906); Dubois, La représentation proportionelle soumise à l'expérience belge (Lille, 1906); and J. Humphreys, Proportional Representation (London, 1911). A careful account is contained in the Report and Evidence of the British Royal Commission on Electoral Systems (1910), Report, Cd. 5,163; Evidence, Cd. 5,352. Useful articles are: E. Mahaim, Proportional Representation and the Debates upon the Electoral Question in Belgium, in *Annals of American Academy of Political and Social Science*, May, 1900; E. Van der Smissen, La représentation proportionnelle en Belgique et les elections générales de mai 1900, in *Annales des Sciences Politiques*, July–Sept., 1900; and J. Humphreys, Proportional Representation in Belgium, in *Contemporary Review*, Oct., 1908.

[2] It will be recalled that the term of deputies is four years, half retiring every two years. There is, therefore, a parliamentary election, but not throughout the entire country, every second year.

in general, to replace the crushing Catholic plurality of former years by a wide distribution of seats among representatives of the various parties and groups. Prior to the election of 1890 the Catholic majority was 32. The election of 1900 left it at 16; that of 1902, at 26; that of 1904, at 20; that of 1906, at 12; that of 1908, at 8; and that of 1910, at 6. Following the elections which took place in five of the nine provinces in 1906, party strength in the Chamber was as follows: Catholics, 89; Liberals, 46; Socialists, 30; Christian Democrats, 1. After the elections in the other four provinces in 1908, it was: Catholics, 87; Liberals, 43; Socialists, 35; Christian Democrats, 1.

The elections of May, 1910,[1] were contested with unusual keenness by reason of the fact that the Liberal-Socialist coalition seemed to have, for the first time in a quarter of a century, a distinct chance for victory. The Catholics were notoriously divided upon certain public issues, notably Premier Schollaert's Compulsory Military Service bill, and it was believed in many quarters that their tenure of power was near an end. The Liberal hope, however, was doomed to disappointment; for, although both Liberals and Socialists realized considerable gains in the popular vote in some portions of the kingdom, in only a single constituency was the gain sufficient to carry a new seat. The consequence was that the Catholic majority was reduced, but not below six, and party strength in the Chamber stood: Catholics, 86; Liberals, 45; Socialists, 34; Christian Democrats, 1. Among reasons that may be assigned for the Liberal failure are the fact that the country was prosperous and not disposed to precipitate a change of governments, the alienation of some voters by the working relations that had been established between the Liberals and the Socialists, and the advantage that regularly accrues to the Catholics from the plural vote.

**601. The Catholic Triumph in 1912.**—During the years 1910–1912 the Catholic tenure of power, prolonged uninterruptedly since 1884, seemed more than once on the point of being broken. Most of the time, however, the legislative machine performed its functions sufficiently well with a majority of but half a dozen seats, and the drift of affairs operated eventually to strengthen the Catholic position. In March, 1911, Premier Schollaert introduced an education bill looking toward the placing of church schools upon a footing financially with the schools maintained by the communes, and the opposition to this measure acquired such intensity that the author of the bill was forced to retire. But his successor, De Broqueville, a man of con-

[1] In the five provinces of Brabant, Anvers, Namur, West Flanders, and Luxemburg, the term of whose deputies was about to expire.

ciliatory temperament, formed a new Catholic cabinet which, by falling back upon a policy of "marking time," contrived to stave off a genuine defeat. In the municipal elections held throughout the country October 15, 1911, the Liberal-Socialist candidates were very generally successful, but the parliamentary elections which took place June 2, 1912, had the unexpected result of entrenching the Catholic party more securely in power than in upwards of a decade. The combined assault of the Liberals and the Socialists upon "clericalism" fell flat, and against the Government's contention that the extraordinary and incontestable prosperity of the country merited a continuance of Catholic rule no arguments were forthcoming which carried conviction among the voters. The Catholic vote showed an increase of 130,610, the Liberal and Socialist opposition an increase of 40,402, and the Christian Democrats a decrease of 4,692. The new chamber consists of 101 Catholics, 45 Liberals, 38 Socialists, and 2 Christian Democrats, giving the Government a clear majority of sixteen. The elections were marked by grave public unrest, involving widespread strikes and anti-clerical demonstrations, with some loss of life. More clearly than before was exhibited in this campaign the essentially bourgeois and doctrinaire character of the present Liberal party. The intimate touch with the masses which in the days of its ascendancy, prior to 1884, the party enjoyed has been lost, and more and more the proletariat is looking to the Socialists for propagation of the measures required for social and industrial amelioration.

**602. The Demand for Further Reform.**—A project upon which the Socialists and Liberals in the last election, as upon several former occasions, have found it possible to unite is the abolition of the plural vote. Almost immediately after the adoption of the amendment of 1893 the Socialists declared their purpose to wage war unremittingly upon this feature of the new system. In its stead they demanded that there be substituted the rule of *un homme, un vote*, "one man, one vote," with the age limit reduced to twenty-one years. Following the triumph of the Catholics in 1900, the agitation of the Socialists was redoubled, and in it the Liberals very generally joined. Between the two groups there arose seemingly irreconcilable differences of method, the Liberals being unable to approve the obstructionism and other violent means employed by their allies. In time, however, the Socialist methods became more moderate, and the realization on the part of both elements that only by fighting together might they hope to win induced a fuller and more durable co-operation between the two. For the time being the Socialists have subordinated to the establishment of universal and equal suffrage all other features of their political

and industrial programme.[1] Upon the desirability of maintaining proportional representation all parties are agreed, and it is probably but a question of time until the principle will be applied fully, as it is not to-day, in the elections of the provinces and communes.

**603. The Legislative Chambers: Organization and Procedure.**—The two houses meet by established right on the second Tuesday in November of each year, at the Palais de la Nation, in Brussels. A regular session must continue through a period of at least forty days. The king may convene the chambers in extraordinary session. He may adjourn them, save that in no case may an adjournment exceed the term of one month; nor may it be renewed during the same session, without the consent of the houses. Finally, the king may dissolve the chambers, or either of them; but the act of dissolution must include an order for an election within forty days and a summons of the newly elected parliament to meet within two months.[2]

Each house judges the qualifications of its members and decides all contests arising in relation thereto; each elects, at the opening of a session, its president, vice-president, secretaries, and other officials; each determines by its own rules the manner in which its powers shall be exercised. Sessions are normally public; but by vote of an absolute majority, taken at the instigation of the president or of ten members, either body may decide to consider a specific subject behind closed doors. Votes are taken *viva voce* or by rising, but a vote on a bill as a whole must always be by roll call and *viva voce*. Except on propositions pertaining to constitutional amendments and a few matters (upon which a two-thirds vote is required), measures are passed by absolute majority. They must, however, be voted upon article by article.

From the essentially democratic character of the Belgian government, it follows that the powers of the legislative chambers are comprehensive. The functions of legislation are vested by the constitution conjointly in the king and the two houses, but in practice they are

[1] August 15, 1911, Socialists and Liberals combined in an anti-plural-vote demonstration in Brussels in which 150,000 people are estimated to have taken part. For an able defense of plural voting under the system prevailing in Belgium see L. Dupriez, L'Organisation du suffrage universel en Belgique. Cf. E. Van der Smissen, La question du suffrage universel en Belgique, in *Annales des Sciences Politiques*, Sept., 1902. On recent aspects of Belgian politics consult L. Dupriez, L'évolution des partis politiques en Belgique et les élections de mai 1906, ibid., Sept., 1906; A. Kahn, Les élections belges, in *Questions Diplomatiques et Coloniales*, June 16, 1910; and J. Van den Heuvel, Les élections belges, in *Le Correspondant*, June 25, 1912. J. H. Humphreys, Proportional Representation in Belgium, in *Contemporary Review*, Oct., 1908, contains a concrete account of the elections of 1908. A useful volume is A. Fromes, Code électoral belge (Brussels, 1908).

[2] Arts. 70–72. Dodd, Modern Constitutions, I., 137.

exercised in a very large measure by the houses alone. Each house, as well as the crown, possesses full rights of legislative initiative, though it is required that all laws relating to the revenues or expenditures of the state, or to military contingents, shall be voted first by the House of Representatives. Authoritative interpretation of measures enacted is confided exclusively to the legislative power, and each house is guaranteed the right to inquire into the conduct of public affairs and to compel the attendance of ministers for the purpose of interpellation, although the lower house alone is given power to formulate charges against public officials and to arraign them before the Court of Cassation.

## IV. The Judiciary and Local Government

**604. The Courts.**—Aside from special military, commercial, and labor tribunals, the courts of Belgium comprise a symmetrical hierarchy modelled upon that created under the Code Napoléon. At the bottom are the courts of the 222 cantons, each consisting of a single justice of the peace, vested in ordinary breaches of police regulations with sole authority, though in more serious cases associated with the burgomaster of the commune. Next above are the tribunals of first instance, one in each of the twenty-six arrondissements into which the kingdom is divided, and each consisting of three judges. The court of first instance serves as a court of appeal from the decisions of the cantonal tribunal, and at the same time it possesses original jurisdiction in more serious cases of crime and misdemeanors within the arrondissement. Above the courts of first instance stand the three courts of appeal, sitting at Brussels, Ghent, and Liège. That at Brussels consists of four chambers. At the apex is the Court of Cassation, sitting at the capital. In this supreme tribunal there is but a single judge, but associated with him is a large staff of assistants. The function of the Court of Cassation is to determine whether the decisions of inferior tribunals are in accord with the law and to annul such as are not. It is of interest to observe, however, that it is the Court of Cassation that tries a minister upon charges preferred by the House of Representatives, and this is the only circumstance under which the tribunal exercises any measure of original jurisdiction. The creation of the Court of Cassation and of the three courts of appeal is specifically provided for within the constitution. All inferior tribunals are created by law, and none are permitted to be established otherwise. For the trial of criminal cases there are special tribunals, in three grades: police courts, correctional courts, and courts of assize.

All judges and justices of the peace are appointed by the king for

life. Members of the courts of appeal and the presidents and vice-presidents of the courts of original jurisdiction are selected from two double lists presented, the one by these courts and the other by the provincial councils. Members of the Court of Cassation are selected from two double lists presented, the one by the Senate and the other by the Court itself. All other judicial officers are appointed by the crown independently. Except for urgent reasons of public order or morals, sessions of all tribunals are public, and every judgment must be pronounced in open court. Unlike Holland, Belgium has a well developed system of trial by jury. Jury trial is guaranteed by the constitution in all criminal cases and in all cases involving political or press offenses. As in England and the United States, it is the function of the jury to determine whether or not the accused is guilty and that of the court to explain the law and to pronounce sentence. A jury consists regularly of twelve members.[1]

**605. Local Government: Province and Arrondissement.**—Upon the subject of local government the constitution of Belgium is less explicit than is that of Holland. Aside from specifying that provincial and communal institutions shall be regulated by law, it contents itself with an enumeration of certain principles—among them direct elections, publicity of sittings of provincial and communal councils, publicity of budgets and accounts—whose application is regularly to be maintained.[2] Of local governmental units there are three:[3] the province, the arrondissement, and the commune. The provinces are nine in number.[4] In each is a council, elected by all resident citizens who are entitled to participate in the direct election of senators. The term is eight years, half of the membership being renewed every four years. The council meets at least once a year, on the first Tuesday in July. Its sessions must not exceed four weeks in length nor be briefer than fifteen days. Special sessions may be called by the king. The council considers and takes action upon substantially all legislative, administrative, and fiscal affairs which concern the province alone. It elects from its own members a permanent deputation of six men which is charged with the government of the province while the council is not in session. This deputation is presided over by the governor-general of the province who is appointed by the crown and

[1] Arts. 92–107. Dodd, Modern Constitutions, I., 140–142. Roubion, La séparation des pouvoirs administratif et judiciaire en Belgique (Paris, 1905).

[2] Arts. 108–109. Dodd, Modern Constitutions, I., 142–143.

[3] Not including the canton, which exists purely for judicial purposes. It is the jurisdiction of the justice of the peace.

[4] Antwerp, Brabant, East Flanders, West Flanders, Hainaut, Liège, Limburg, Luxemburg, and Namur.

who serves as the principal intermediary between the provincial and the central governments.

The arrondissement, or district (twenty-six in number), is important chiefly as an electoral and judicial unit. Members of the lower house of the national parliament are elected within the arrondissement under the scheme of proportional representation which has been described; and, as has been pointed out, each arrondissement is the seat of a court of first instance.

**606. The Commune.**—In Belgium, as in France and other continental countries, the vital organism of local government is the commune. The total number of communes in the kingdom is 2,629. The principal agency of government within each is a council. Members of this council are elected for a term of eight years, under arrangements of a somewhat complicated character determined by the population of the commune. Voting is *viva voce;* plural votes (to a maximum of four) are authorized; and seats, under certain conditions, are allocated in accordance with the principle of proportional representation. A somewhat singular fact is that the aggregate communal electorate of the kingdom is perceptibly smaller than the provincial or the national. The fact arises largely from the circumstance that the communal voter is required to have been domiciled at least three years in the commune, while residence of but a single year is required for participation in provincial and parliamentary elections.[1]

The administrative body of the commune consists of a burgomaster, or mayor, appointed by the crown (in communes whose population exceeds 5,000 elected by the communal council) for a term of ten years, and a college of *échevins*, or aldermen, elected by and from the communal council. The burgomaster is head of the local police, and to him and to the council fall the keeping of the register of births, marriages, and deaths, the making and enforcing of local ordinances, and, in general, the safeguarding of the welfare of the community. The more important measures of the communal council become valid only after they have received the approval of the provincial deputation, or even of the ministry at Brussels; and there are special officials, known as *commissaires d'arrondissement*, appointed by the provincial deputation, to maintain supervision over the communes and their governing authorities. A fundamental characteristic, indeed, of Belgian administration is the combination of constant supervision by the central power with a really large measure of local autonomy.[2]

[1] In 1902, 1,146,482 communal electors cast a total of 2,007,704 votes. In 1910–1911 there were 1,440,141 provincial, and 1,300,514 communal, voters.

[2] Dupriez, Les Ministres, 262–276; E. de Laveleye, Local Government and Taxation, in Cobden Club Essays (London, 1875).

# PART VIII.—SCANDINAVIA

## CHAPTER XXX

### THE GOVERNMENT OF DENMARK

#### I. Development prior to 1814

The kingdom of Denmark is among the smallest of European states. Its area is but 15,582 square miles, which is less than one-third of that of the state of New York, and its population, according to the returns of 1911, is but 2,775,076. The nation is one whose social experiments, economic enterprises, and political practices abound in interest. As a power, it counts nowadays for little. Time was, however, when it counted for much, and the developments by which the kingdom has been reduced to its present status among the nations comprise one of the remarkable chapters of modern European history.

**607. Union of Kalmar, 1397.**—The maximum of Danish dominion was attained by virtue of the Union of Kalmar, in 1397, whereby the three kingdoms of Denmark, Norway, and Sweden were united under the regency of Margaret, daughter of the Danish king Valdemar IV.[1] By the terms of this arrangement the native institutions and the separate administration of each of the three states were guaranteed; and, in point of fact, so powerless at times during succeeding generations was the Danish sovereign in his over-sea dominions that for all practical purposes each of the three affiliated kingdoms may be regarded as having retained essentially its original independence. During an extended period at the middle of the fifteenth century Sweden even had a king of her own. None the less, there was a form of union, and at times the preponderance of Denmark tended to reduce the northern nations to the status of mere dependencies. The union with Sweden lasted only a century and a quarter. Under the leadership of Gustavus Vasa the Swedish people, in 1523, effectually regained their independence, although in accordance with the Treaty of Malmö, in 1524, certain of the southernmost Swedish provinces remained for a

[1] The nominal sovereign was Margaret's great-nephew, Eric of Pomerania, who was elected at a convention of representatives of the three kingdoms held simultaneously with the establishment of the Union. Eric was deposed in 1439.

time under Danish control.[1] It was the lot of Norway, on the other hand, not alone to be brought more thoroughly into subjection to Denmark than was Sweden, but to continue under Danish sovereignty until 1814, and even at that date to pass instantly from the control of Denmark into that of Sweden, rather than to regain her ancient independence.

**608. The Loss of Norway, 1814.**—The loss of Norway by Denmark was an incident of the Napoleonic wars. During the course of those wars Denmark, as long as was practicable, maintained a policy of neutrality. But in 1807, after she had rejected an offer of a British alliance, she was attacked by a British fleet, and thereupon she became the firmest and most persistent of the allies of Napoleon. Thus it came about that when the contest of the powers drew to an end Denmark had the misfortune to be found upon the losing side. Sweden stood with the Allies, and the upshot was that, to compensate that nation for her loss of Finland to Russia and of Pomerania to Prussia, the Allies gave their consent, in 1812–1813, to the dismemberment by Sweden of the Danish dominion. The work was accomplished by the French marshal Bernadotte, crown prince of Sweden (by adoption) from 1810, and later king (1818–1844). By the Treaty of Kiel, January 14, 1814, Norway was ceded perforce by Denmark to Sweden, and by the Congress of Vienna, later in the year, the transfer was accorded the formal approval of the powers. The Norwegians objected and proceeded to elect as their king a Danish prince; but in the end they were compelled to submit. Demnark was unable to do more than make ineffectual protest.

**609. Political Development: the Revolution of 1660.**—The governmental system with which Denmark emerged from the era of Napoleon was essentially that which had been in operation in the kingdom since the second half of the seventeenth century. Prior to a remarkable revolution which, in 1660, followed the conclusion of a costly war with Sweden, monarchy in Denmark was limited and almost uniformly weak. Through three hundred years the kings were elected by the Rigsrad, or senate, and the conditions of their tenure were such as to preclude both the independence of action and the accumulation of resources which is essential to absolutism. As early as 1282 the nobles were able to extort from the crown a *haandfaestning*, or charter, and almost every sovereign after that date was compelled, once at least during his reign, to make a grant of chartered privileges. To the

[1] R. N. Bain, Scandinavia, a Political History of Denmark, Norway, and Sweden (Cambridge, 1905), Chap. 3; P. B. Watson, The Swedish Revolution under Gustavus Vasa (London, 1889).

Danehof, or national assembly, fell at times a goodly measure of authority, although eventually it was the Rigsrad that procured the supreme control of the state. The national assembly comprised the three estates of the nobles, the clergy, and the burgesses; [1] the senate was a purely aristocratic body.

In 1660 there occurred a revolution in consequence of which the monarchy was rehabilitated and a governmental system which long had been notoriously disjointed and inefficient was replaced by a system which, if despotic, was at least much superior to that which theretofore had been in operation. The nobles, discredited by the calamities which their misrule had brought upon the nation, were compelled to give way, and the estates represented in the Danehof surrendered, in a measure voluntarily, a considerable portion of the privileges to which they had been accustomed to lay claim. The monarchy was put once more upon an hereditary basis and its powers were materially enlarged. The intent of the aggressive sovereign of the day, Frederick III., was to proceed with caution, but not to stop half-way. By the promulgation of two monumental documents the road was thrown open to thoroughgoing absolutism. One of these was the "Instrument, or Pragmatic Sanction, of the King's Hereditary Right to the Kingdoms of Denmark and Norway," dated January 10, 1661. The other was the *Kongelov*, or "King's Law," of November 14, 1665, a state paper which has been declared to have "the highly dubious honor of being the one written law in the civilized world which fearlessly carries out absolutism to its last consequences." [2] In the *Kongelov* it was made *lèse-majestê* in any manner to usurp or infringe the king's absolute authority; it was asserted that the moment the sovereign ascends the throne crown and scepter are vested in him by his own right; and the sole obligation of the king was affirmed to be to maintain the indivisibility of the realm, to preserve the Christian faith in accordance with the Augsburg Confession, and to execute faithfully all of the provisions of the *Kongelov* itself. Such were the principles upon which, during upwards of two centuries thereafter, the government of the Danish kingdom was based. Absolutism was all but unrelieved; but it is only fair to add that most of the sovereigns, according to the light which they possessed, sought to govern in the interest of their subjects.[3]

[1] In the Swedish diet the peasantry constituted a fourth estate, but in Denmark no political power was possessed by this class.

[2] Bain, Scandinavia, 266.

[3] For sketches of Danish political history prior to 1814 see Bain, Scandinavia, Chaps. 2, 4, 7, 10, 15; Lavisse et Rambaud, Histoire Générale, III., Chap. 14, IV., Chap. 15; VI., Chap. 17; VII., Chap. 23; IX., Chap. 23. An important Danish work is P. F. Barfod, Danmarks Historie, 1319–1536 (Copenhagen, 1885).

## II. The Rise of Constitutionalism, 1814–1866

**610. The Provincial Diets.**—Gradually after 1814 the kingdom recovered from the depression into which by its loss of territory and its staggering indebtedness it had been plunged, and with the recovery came a revived political spirit as well as a fresh economic stimulus. The sixteen years between the Treaty of Kiel and the revolutionary year 1830 were almost absolutely devoid of political agitation, but after 1830 there set in, in Denmark as in most continental countries, a liberal movement whose object was nothing less than the establishment of a constitutional system of government. To meet in some measure the demands which were made upon him, King Frederick VI. called into being, by decrees of 1831 and 1834, four Landtags, or diets, one in each of the provinces of the realm—Schleswig, Holstein, Jutland, and the Islands.[1] The members of these assemblies, comprising burgesses, landowners, and peasants, were to be chosen by the landed proprietors for a term of six years, and they were to meet biennially for the discussion of laws and taxes and the drawing up of petitions. A few landowners, professors, and ecclesiastics were to be appointed to membership by the crown. The function of each of the four bodies was purely consultative.

**611. Royal Opposition to Reform.**—From the point of view of the Liberals, whose aim was the institution of a national parliamentary system, the king's concession was too meager to comprise more than a bare beginning. Throughout the remainder of the reign agitation was kept up, although at the hand of a sovereign whose fundamental political principle was the divine right of kings, little that was more substantial was to be expected. Christian VIII., who succeeded Frederick in December, 1839, brought with him to the throne a reputation for enlightened and progressive views. Further, however, than to pledge himself to certain administrative reforms the new sovereign displayed scant willingness to go. One liberal project after another was repelled, and press prosecutions and other coercive measures were brought to bear to discourage propaganda. It was in this period, however, that there arose a preponderating issue whose settlement was destined eventually to exert a powerful influence in the establishment of constitutional government in Denmark, i. e., the question of the policy to be pursued in respect to the affiliated duchies of

[1] The ordinance establishing the provincial assemblies was promulgated May 28, 1831, but the assemblies did not come into existence until after the supplementary decrees of May 15, 1834. In 1843 Iceland was granted "home rule," with the right to maintain an independent legislature.

Schleswig, Holstein, and Lauenburg.[1] During the later years of the reign successive ministries grappled vainly with this problem, and the political forces of the kingdom came to be divided with unprecedented sharpness by the conflict between the separatist tendency and the demand for immediate and complete incorporation. The king himself was brought eventually to consent to the framing of a constitution for the whole of his dominions, as a means of holding the realm together; but he died, January 20, 1848, before the task had been completed.

**612. The Constitutions of 1848–1849.**—Within eight days the constitution was promulgated by the new sovereign, Frederick VII. Under its provisions there was established a parliament representative of all of the Danish dominions. Neither the Danes nor the inhabitants of the duchies, however, were satisfied, and in Holstein there broke out open rebellion. Prussia intervened in behalf of the disaffected duchies, and Great Britain and Russia in behalf of the Danish Government. The result was the triumph of the Government; but in the meantime the rescript by which the common constitution had been promulgated was withdrawn. In its place was published a decree which provided for the establishment of a bicameral national assembly (Rigsdag), of whose 152 members 38, nominated by the crown, were to form a Landsthing, or upper chamber, and the remaining 114, elected by the people, were to comprise a Folkething, or house of representatives. In the early summer of 1849 a constitution embodying these arrangements was drawn up; and June 5, after having been adopted by the new Rigsdag, the instrument was approved by the crown. For the moment the question of the duchies seemed insoluble, and this second constitution was extended to Jutland and the Islands only, i. e., to Denmark proper. Its adoption, however, is a landmark in Danish constitutional history. Under its terms the autocracy of the *Kongelov* was formally abandoned and in its place was substituted a limited monarchy in which legislative powers were to be shared by the crown with an elective diet and the executive authority was to be exercised by ministers responsible to the legislative body. As will appear, it was this constitution of June 5, 1849, that, with revision, became permanently the fundamental law of the kingdom.[2]

[1] Holstein and Lauenburg were German in population and were members of the German Confederation. Southern Schleswig also was inhabited by German-speaking people, though the duchy did not belong to the Confederation. Schleswig and Holstein had been joined with Denmark under a precarious form of union since the Middle Ages. Lauenburg was acquired, with the assent of the Allies, in 1814–1815 in partial compensation for the loss of Norway.

[2] Bain, Scandinavia, Chap. 16; Cambridge Modern History, XI., Chap. 24

**613. The Problem of the Duchies.**—Following prolonged international conferences, there was issued, January 28, 1852, a new constitutional decree by which it was provided that the kingdom proper and Schleswig, Holstein, and Lauenburg should have a common constitution for common affairs, but that each of the territories should enjoy autonomy in the management of its separate concerns. An ultra-conservative constitution which had been worked out by the Rigsdag in consultation with the Landtags of the duchies, was promulgated October 2, 1855. No sooner had the instrument been put in operation, however, than stubborn opposition to its provisions arose, both from the duchies themselves and from the interested powers of Germany. November 28, 1858, the Danish Government yielded in so far as to consent to the withdrawal of the constitution from Holstein and Lauenburg. Through several years thereafter the question of the duchies overshadowed all else in Danish politics and in Danish diplomatic relations. March 30, 1863, a royal decree recognized the essential detachment of Holstein from the monarchy and vested the legislative power of the duchy solely in the king and the local estates. Later in the year, however, the premier Hall proposed and carried through the Rigsdag a constitution which contemplated again the incorporation of Schleswig with the kingdom. To this instrument the Council of State, November 13, gave its assent, and, five days later, with the approval of the new sovereign, Christian IX., it became law. So far as Denmark was concerned, the solution of the question of the duchies was now at hand. In the name of Prussia and Austria, Bismarck demanded summarily that the November constitution be rescinded. War ensued, and by the Treaty of Vienna, October 30, 1864, Denmark, in defeat, yielded all claim to Schleswig, Holstein, and Lauenburg. After continuing for a time a bone of contention between the leading German states, these territories were incorporated, subsequent to the Austro-Prussian war of 1866, in the kingdom of Prussia. Denmark, shorn of a million of population and approximately one-third of her territory, was reduced in power and area to substantially her present proportions.[1]

**614. The Revised Constitution of 1866.**—The loss of the duchies, while humiliating, cut the Gordian knot, of Danish political re-

(bibliography, pp. 961–962); Lavisse et Rambaud, Histoire Générale, X., Chap. 18; C. F. Allen, Histoire de Danemark depuis les temps les plus reculés jusqu' à nos jours (Copenhagen, 1878).

[1] Cambridge Modern History, XI., Chap. 16; Lavisse et Rambaud, Histoire Générale, XI., Chap. 12; J. W. Headlam, Bismarck and the Foundation of the German Empire (New York, 1909), Chap. 8; H. Delbrück, Der Deutsch-Dänische Krieg, 1864 (Berlin, 1905).

construction. July 28, 1866, the constitution of July 5, 1849, in revised form, was reissued, and this instrument continues to the present day the fundamental law of the kingdom. Its ultimate adoption was the achievement largely of the agricultural interests in the Rigsdag; but the king, Christian IX., though not in sympathy with the parliamentary ideal of government, gave it his cordial support. The constitution is an elaborate document, in ninety-five articles. In addition to the customary specifications relating to the executive, legislative, and judicial departments of the government, it contains a wide variety of guarantees respecting religion, freedom of speech and of the press, liberty of assemblage and of petition, and uniformity of judicial procedure, which, taken together, comprise a very substantial bill of rights.[1] The method of its amendment is not materially unlike that prevailing in Holland, Belgium, and a number of other continental countries. Proposals regarding alterations or additions may be submitted at any time within either branch of the Rigsdag. In the event of the adoption of a proposal of the kind by both chambers, it becomes the duty of the Government, provided it favors the change, to dissolve the Rigsdag and to order a general election. If the newly chosen Rigsdag adopts the proposed amendment without change and the crown formally approves it, the modification goes forthwith into effect.[2] Constitutional amendments since 1866 have been, however, neither numerous nor important.[3]

## III. The Crown and the Ministry

**615. The King: Status and Powers.**—The form of the Danish government is declared by the constitution to be that of a limited monarchy.[4] The throne is hereditary, and the succession is regulated by a law of July 31, 1853, adopted in pursuance of the Treaty of London of

[1] Arts. 80–94. Dodd, Modern Constitutions, I., 278–280.

[2] Art. 95. Ibid., I., 280.

[3] The text of the Danish constitution, in English translation, is printed in Dodd, Modern Constitutions, I., 267–281; H. Weitemeyer, Denmark (London, 1891), 203–217; and British and Foreign State Papers, LVIII. (1867–1868), 1,223 ff. The best brief treatise on the Danish constitutional system is C. Goos and H. Hansen, Das Staatsrecht des Königsreichs Dänemark (Freiburg, 1889), in Marquardsen's Handbuch. A Danish edition of this work was issued at Copenhagen in 1890. The best extended commentaries are H. Matzen, Den Danske Statsforfatningsret (3d ed., Copenhagen, 1897–1901) and C. G. Holck, Den Danske Statsforfatningsret (Copenhagen, 1869). T. H. Aschehoug, Den Nordiske Statsret (Copenhagen, 1885) is a useful study, from a comparative point of view, of the constitutional law of Denmark, Norway, and Sweden.

[4] Art. 1. Dodd, Modern Constitutions, I., 267.

May 8, 1852, wherein the powers bestowed the Danish succession upon Prince Christian, of Schleswig-Holstein-Sonderburg-Glücksburg, and the direct male descendants of his union with the Princess Louise of Hesse-Cassel, niece of Christian VIII. of Denmark.[1] By the constitution it is required of the king that he shall not become the ruler of any country other than Denmark without the consent of the Rigsdag, that he shall belong to the Evangelical Lutheran Church (the national church of Denmark, supported by the state), and that before assuming the throne he shall give in writing before the Council of State an assurance, under oath, that he will maintain inviolate the constitution of the kingdom.[2] The royal civil list is fixed by law for the term of the reign. That of the present sovereign, Frederick VIII., is one million kroner annually.

The powers of the king are comprehensive. Within the limitations prescribed by the constitution, he exercises "supreme authority over all the affairs of the kingdom." He appoints to all offices, dismisses from office, and transfers from one office to another. He declares war and makes peace. He concludes and terminates treaties of alliance and of commerce, on condition only that an agreement which involves a cession of territory or a change of existing international relations must receive the assent of the Rigsdag. He exercises the power of pardon and of amnesty, save that without the consent of the Folkething he may not relieve ministers of penalties arising from impeachment proceedings. He grants such licenses and exemptions from the laws as are authorized by statute. He convenes the Rigsdag in regular session annually and in extraordinary session at will, adjourns it, and dissolves either or both of the houses. He may submit to it projects for consideration or drafts of laws, and his consent is necessary to impart legal character to any of the measures which it enacts. He orders the publication of statutes and sees that they are executed. Finally, when the need is urgent and the Rigsdag is not in session, he may promulgate ordinances, provided, first, that they are not contrary to the constitution, and, second, that they are laid before the Rigsdag at its ensuing meeting.

**616. The Ministry and the Parliamentary System.**—For the measures of the government the king is not personally responsible. His powers are exercised through ministers, who are appointed and may be removed by him, and whose number and functions are left to his determination. The ministries are nine in number, as follows: For-

[1] Prince Christian became, in 1863, King Christian IX.

[2] One original text of this pledge must be preserved in the archives of the crown, another in those of the Rigsdag. Art. 7. Dodd, Modern Constitutions, I., 267.

eign Affairs, Interior, Justice, Finance, Commerce, Defense, Agriculture, Public Works, and Public Instruction and Ecclesiastical Affairs. Collectively the ministers form the Council of State, over which the king presides and in which the heir to the throne, if of age, is entitled to a seat. All laws and important public matters are apt normally to be discussed in the Council of State. There is also, however, a Council of Ministers, consisting simply of the nine heads of departments under the presidency of an additional minister designated by the crown, and to this body are referred in practice many minor subjects that call for consideration.

The ministers, so the constitution affirms, are responsible for the conduct of the government.[1] The king's signature of a measure gives it legal character only if accompanied by the signature of one or more of the ministers, and ministers may be called to account by the Folkething, as well as by the king, for their conduct in office. There is, furthermore, a special Court of Impeachment for the trial of ministers against whom charges are brought. On the surface, these arrangements seem to imply the existence of a parliamentary system of government, with a ministry answerable singly and collectively to the popular legislative chamber. In point of fact, however, there has been all the while much less parliamentarism in Denmark than seemingly is contemplated in the constitution, and it is hardly too much to say that since the adoption of the present constitution the most interminable of political controversies in the kingdom has been that centering about the question of the responsibility of ministers. Until at least within the past decade, the practice of the crown has been regularly to appoint ministers independently and to maintain them in office in disregard of, and even in defiance of, the wishes of the popular branch of the legislature. The desire of the Liberals has been to inaugurate a thoroughgoing parliamentary régime, under which the sovereign should be obligated to select his ministers from the party in control of the Folkething and the ministers, in turn, should be responsible to the Folkething, in fact as well as in theory, for all of their official acts. Throughout the prolonged period covered by the ministry of Jakob Estrup (1875–1894) the conflict upon this issue was incessant. During the whole of the period Estrup and his colleagues commanded the support of a majority in the Landsthing, but were accorded the votes of only a minority in the lower chamber. After the elections of 1884, indeed, the Government could rely upon a total of not more than nineteen votes in that chamber.

**617. The Establishment of Ministerial Responsibility.**—Under the

[1] Art. 12. Dodd, Modern Constitutions, I., 268.

continued stress of this situation constitutionalism broke down completely. The Government, finding its projects of military and naval reform persistently thwarted and its budgets rejected, stretched its prerogatives beyond all warrant of law. Provisional measures, in the form of royal ordinances, and arbitrary decisions multiplied, and budgets were adopted and carried into execution without so much as the form of parliamentary sanction. In time the forces of opposition fell into disagreement and the more moderate element was brought to the point of compromise. Between the Conservatives and the National Liberals, on the one hand, by whom the Government had been supported, and the conciliatory element of the Liberal opposition, on the other, a truce was arranged, and in 1894, for the first time in nine years, it was found possible to enact the annual finance law in regular manner. In this same year Estrup's retirement cleared the way for the appointment of a moderate Conservative ministry. Under Estrup's successors the conflict was continued, but not so vigorously as before. More and more the political center of gravity shifted to the Folkething, and when the general elections of 1901 returned to that body an overwhelming majority of Liberals, Christian IX. was at last compelled to give way and to call into being a Liberal ("Left Reform") ministry. It is too much to say that the parliamentary system is as yet completely established in Denmark. There is, however, a closer approximation to it than ever before, and there is every prospect of the ultimate and thorough triumph of the essential parliamentary principle. In 1908, and again in 1909, a ministry was virtually forced to resign by the pressure of parliamentary opposition.

## IV. The Rigsdag—Political Parties

**618. The Landsthing.**—The Rigsdag is composed of two chambers—the Landsthing, or Senate, and the Folkething, or House of Representatives. The Landsthing consists of 66 members, of whom 12 are appointed by the king, seven are elected in Copenhagen, 45 are elected in the larger electoral divisions comprising rural districts and towns, one is elected in Bornholm, and one is chosen by the Lagthing of the Faröe Islands.[1] The king's appointment of members is made for life, from among active or former members of the Folkething. Elected members serve regularly eight years, one-half retiring every four years. The seven members for Copenhagen are chosen by an electoral college

[1] Art. 34. Dodd, Modern Constitutions, I., 272. The status of the Faröe Islands is that of an integral portion of the kingdom, not that of a dependency. It is analogous to the status of Algeria in the French Republic. No other outlying Danish territory is represented in the Rigsdag.

composed of (1) electors chosen by all citizens who are entitled to vote for members of the Folkething, in the ratio of one elector for every 120 voters or major fraction thereof, and (2) an equal number of electors chosen by the voters who, during the preceding year, have been assessed upon a taxable income of not less than 2,000 rix-dollars. The members elected from the rural districts and towns are chosen indirectly, after a manner analogous to that in operation in the capital.[1] The result is a very successful combination of the principles of indirect popular election and indirect representation of property. In all cases the election of members takes place according to the principles of proportional representation.[2] Every person eligible to the Folkething is eligible to the Landsthing, provided he has resided in his electoral circle, or district, during the year preceding his election.

**619. The Folkething.**—The Folkething is composed of deputies chosen directly by manhood suffrage for a term of three years. By the constitution it is stipulated that as nearly as practicable there shall be one member for every 16,000 inhabitants. In point of fact, the total membership of the Chamber is but 114, whereas at the ratio indicated it should be upwards of 170. Deputies are elected by secret ballot (since 1901), in single-member districts. The franchise is extended to all male citizens of good reputation who have attained the age of thirty years, except those who are in actual receipt of public charity, those who have at one time been recipients of public charity and have rendered no reimbursement therefor, those who are in private service and have no independent household establishment, and those who are not in control of their own property. The voter must have resided a minimum of one year in the circle in which he proposes to vote.[3] With the exception of non-householders in private service, of persons under guardianship, and of recipients of public charity, all male citizens who have completed their twenty-fifth year are qualified for election. Curiously enough, it is thus possible for a citizen to become a member of the Folkething before he is old enough to vote at a national election. Members of both chambers receive, in addition to travelling ex-

[1] For details see Art. 37 of the constitution. Dodd, Modern Constitutions, I., 272.

[2] It is of interest to observe that Denmark was the first nation to make use of a system of proportional representation. The principle was introduced originally as early as 1855, in the constitution promulgated in that year, and it was retained through the constitutional changes of 1863 and 1866, although its application was restricted to the election of members of the upper chamber. An account of its introduction is contained in La représentation proportionnelle (Paris, 1888), published by the French Society for the Study of Proportional Representation.

[3] Art. 30. Dodd, Modern Constitutions, I., 271.

penses, regular payment for their services at the rate of ten kroner per day during the first six months of a session, and six kroner for each day thereafter.

During recent years there has been no small amount of agitation in behalf of a more democratic electoral system. In April, 1908, there was enacted an important piece of legislation whereby the franchise in municipal elections was conferred upon all resident taxpayers of the age of twenty-five, men and women alike; and, beginning with the elections of 1909, women have both voted and held office regularly within the municipalities. By the legislation of 1908 the number of persons qualified to vote at local elections was practically doubled. Early in 1910 a measure was passed in the Folkething whereby the age limit for voters in parliamentary elections was reduced from thirty to twenty-five years and the suffrage was conferred upon women and upon persons engaged in service. This measure did not become law, but in the Folkething elected May 20 of the same year Premier Berntsen introduced a new bill of essentially the same nature. The question of proportional representation was deferred, the bill providing for (1) the reduction of the voting age to twenty-five; (2) the increase of the number of deputies to 132; and (3) the extension of the suffrage in national elections to women, together with eligibility for seats in both of the legislative chambers. This measure likewise failed; but at the opening of Parliament in October, 1912, fresh proposals upon the subject were introduced.

**620. The Rigsdag: Sessions and Powers.**—The Rigsdag is required to meet in regular session on the first Monday in October of every year. Each house determines the validity of the election of its members; each makes its own regulations concerning its order of business and the maintenance of discipline; each elects its own president, vice-presidents, and other officers. Each has the right to propose bills, each may present addresses to the king, and the consent of each is necessary to the enactment of any law. By provision of the constitution the annual budget must be laid on the table of the Folkething at the beginning of each regular session, and no tax may be imposed, altered, or abolished save by law. Each house is required to appoint two salaried auditors whose business it is to examine the yearly public accounts and to determine whether there have been either unrecorded revenues or unauthorized expenditures. For the adjustment of conflicts between the two chambers there is provided a method whereby there may be constituted a joint conference committee similar to that employed under like circumstances in the American Congress.[1]

[1] Art. 53. Dodd, Modern Constitutions, I., 274.

Sessions are public, and a majority of the membership constitutes a quorum. With the consent of the house to which he belongs, any member may propose subjects for consideration and may request explanations from the Government concerning them. Ministers are entitled to appear and to speak in either chamber as often as they may desire, provided they do not otherwise infringe upon the order of business. By reason of the uncertain status of ministerial responsibility the right of interpellation means as yet but little in practice. The minister may or may not reply to inquiries, and in any case he is not obliged by unfavorable opinion or an adverse vote to retire.

**621. Political Parties: the Ministry of Estrup, 1875–1894.**—Prior to 1848 the preponderating public issues of Denmark were concerned chiefly with the introduction in the kingdom of a constitutional type of government. Between 1848 and 1864, they related all but exclusively to the status of the duchies of Schleswig, Holstein, and Lauenburg. During the closing quarter of the past century they centered principally in the titanic conflict which a growing and indomitable majority in the Folkething, representing a no less determined majority of the nation, waged with King Christian IX. and his advisers in behalf of the enforcement of constitutional limitations upon the crown and of ministerial responsibility to the national legislative body.

The prolonged struggle between the Government and the parliamentary majority had its beginning in 1872, when the various radical groups in the Folkething, drawing together under the designation of the United Left, rejected a proposed budget and passed a vote of want of confidence in the Conservative Government. The avowed purpose of the disaffected elements was to force the ministry of Holstein of Holsteinborg to retire, to compel the sovereign to select his ministers from the parliamentary majority, and to enforce the principle of ministerial responsibility to the lower legislative chamber. Supported by the king and the Landsthing, however, the ministry refused to resign. June 11, 1875, there was called to the premiership an able and aggressive statesman, Jakob Estrup, who through the next nineteen years continuously maintained the Government's position against the most desperate of parliamentary assaults. During the whole of this period Estrup commanded the support of the Landsthing, but was opposed by large majorities in the Folkething and throughout the country. The struggle raged principally upon questions of finance. Estrup, who retained for himself the portfolio of finance, was bent upon the strengthening of Danish armaments, and over the protest of the Folkething huge budgets were put into effect again and again by simple ordinance of the crown. From 1882 onwards ordinary legislation

was at a standstill, and during nine years after 1885 there was not one legal grant of supplies. The constitution was reduced well nigh to waste paper.

**622. Later Conservative Governments: the Triumph of the Left.**—In 1886 the Radicals, despairing of overthrowing the Estrup government by obstruction, resorted for the first time to negotiation. Not until April 1, 1894, however, was the parliamentary majority able to agree with the Government and the Landsthing upon a budget which, by being made retroactive, legalized the irregular fiscal expedients of the past two decades. In August of the same year Estrup was succeeded in the premiership by Reedtz-Thott who, although a Conservative, and hence a supporter of the Government's position, was more favorable to conciliation than had been his predecessor. The struggle, however, was by no means ended. The elections of 1895 and of 1898 resulted in decisive victories for the Liberals and Radicals, and in the Chamber the Government was confronted by an overwhelming majority comprising a Moderate Left, a Reform or Radical Left, and a group of Social Democrats. Even in the Landsthing the Government's hold was growing less substantial. Reedtz-Thott, none the less, clung to office until December, 1899, and after his retirement there followed two more Conservative ministries—those of Hörring (December, 1899, to April, 1900) and of Sehested (April, 1900, to July, 1901).

On July 16, 1901, occurred the most notable political event in a half-century of Danish history. Confronted by a majority of 106 to 8 in the Folkething, besieged by widespread popular opinion, and possessing no longer a dependable majority in the Landsthing, the aged Christian IX. gave way, with such grace as he could muster, and summoned to the premiership Professor Deuntzer, by whom was constituted a pure Left Reform ministry. At the partial elections of September 19, 1902, the Conservatives lost absolutely their majority in the upper chamber, while in the Folkething party strength was so redistributed that, while the Conservatives retained their eight seats, the Social Democrats acquired fourteen and the Left Reform party seventy-seven. The elections of June 16, 1903, wrought but insignificant changes of status.

**623. The Christensen Ministry (1905–1908) and the Elections of 1906.**—As was to be expected of a party whose rôle had been regularly one of mere opposition, the Left Reform, after gaining office, developed a certain amount of internal discord. In January, 1905, the Deuntzer ministry broke up and a more homogeneous and moderate cabinet was organized under the Left Reform leader Christensen. This ministry contrived to retain office until October, 1908. At the elections

of May 29, 1906, the Government took its stand upon manhood suffrage in parliamentary elections, equal suffrage in municipal elections (in accordance with the principle of proportional representation) for all taxpayers, and the reform of both the administrative and judicial systems. Its bitterest opponents were its former allies, the Radical Left (which had split off from the Left Reform party after the formation of the Christensen ministry) and the Social Democrats, though neither of these parties put forward a programme which was in any measure specific. After an unusually spirited contest the Government was found to have lost three seats, the Social Democrats to have gained eight, the Radical Left to have lost four, and the Conservatives to have gained two. The resulting grouping in the Folkething was as follows: Left Reform (Ministerialists), 55; Moderate Left, 9; Radical Left, 9; Social Democrats, 24; Conservatives, 13; Independents, 3; member for Faröe Islands, 1. At the partial renewal of the Landsthing in September, 1906, the Government lost five seats, and with them the majority which, aided by the Moderate Left and the Free Conservatives,[1] it had been able since 1901 to control. The consequence of its losses was that the Christensen ministry drew appreciably toward the Conservative elements of the Rigsdag, as against the Radicals and Socialists.

**624. Ministerial Instability, 1908–1912.**—October 11, 1908, largely by reason of the scandal in which it was involved by the embezzlements of the minister of the interior Alberti, the ministry of Christensen was replaced by a cabinet formed by Neergaard. It in turn retired, July 31, 1909, defeated upon bills to which it was committed for the strengthening of the national fortifications. The Holstein-Ledreborg ministry which succeeded was able to secure the passage of the bills, but, October 22, 1909, it was forced out on a vote of want of confidence. At the election of May 25, 1909, in which the military bills comprised the principal issue, the Left Reform government had continued to lose ground, while the Radicals (though not the Social Democrats) and the Conservatives had gained. October 28, 1909, a new ministry was formed by the Radical leader Zahle. In the Folkething the Radicals possessed 20 seats only, but with the aid of the Social Democrats, possessing 24, they hoped to be able to attain some measure of success. The hope proved vain. April 18, 1910, the Folkething was dissolved, and there followed another spirited campaign in which the military question was preponderant. The Radical government, with its Socialist allies, went before the country on a platform which proposed the

[1] A group which, after the formation of the Deuntzer ministry, split off from the Conservatives in the upper chamber.

repeal of the defense measures passed during the previous year. But at the elections of May 20 both Radicals and Social Democrats obtained precisely the respective number of seats which they had before possessed, while 69 deputies were returned by the groups which were favorable to the execution of the contested measures. July 1, the Zahle ministry resigned and was succeeded by a cabinet formed by Klaus Berntsen, leader of the Moderate Left. The new ministry, although drawn exclusively from the Left, was well received by the Conservatives, who pledged it their continued support against the Radical-Socialist coalition.[1]

## V. The Judiciary and Local Government

**625. General Principles: the Courts.**—In the Danish constitution there are laid down a number of general principles with respect to the judicial branch of the government, but the organization of the courts is left almost entirely to be regulated by law. It is stipulated that judges, who are appointed by the crown, may not be dismissed except in consequence of judicial sentence, nor transferred against their wishes from one tribunal to another, unless in the event of a reorganization of the courts;[2] that they shall exercise their functions strictly in compliance with law; that in criminal cases and cases involving political offenses trial shall be by jury; that in the administration of justice there shall be, so far as practicable, publicity and oral procedure; and that it shall be within the competence of the courts to decide all questions relative to the extent of the powers of the public officials.

The tribunals that have been established by law comprise, beginning at the bottom, the magistracies of the *herreds*, or hundreds, and the justiceships of the towns; a superior court (*Overret*), with nine judges, at Viborg, and another, with twenty judges, at Copenhagen; and a Supreme Court (*Höjesteret*), with a chief justice, twelve associate judges, and eleven special judges, at Copenhagen. Of hundred magistrates (*herredsfogder*) and town justices (*byfogder*) there are, in all, 126. Appeal in both civil and criminal cases lies from them to the superior courts, and thence to the supreme tribunal. There is, in addition, a Court of Impeachment (*Rigsret*), composed of the members of the Supreme

[1] The salient facts relating to the political history of Denmark since 1870 may be gleaned from the successive volumes of the *Annual Register*. Works of importance dealing with the subject include N. Neergaard, Danmarks Riges Historie siden 1852 (Copenhagen, 1909); H. Holm, Forligets förste Rigsdagssamling 1894–1895 (Copenhagen, 1895), and Kampen om Ministeriet Reedtz-Thott (Copenhagen, 1897); H. Barfod, Hans Majestaet Kong Christian IX. (Copenhagen, 1888); and A. Thorsöe, Kong Christian den Niende (Copenhagen, 1905).

[2] At the age of sixty-five they may be retired on full salary.

Court, together with an equal number of members of the Landsthing elected by that body as judges for a term of four years. The principal function of this tribunal is the trial of charges brought against ministers by the king or by the Folkething.[1]

**626. The Administration of Justice Act, 1908.**—In May, 1908, a long-standing demand of the more progressive jurists was met in part by the passage of an elaborate Administration of Justice bill, whereby there was carried further than previously the separation of the general administrative system of the kingdom from the administration of justice. Not until the enactment of this measure were the constitutional guarantees of jury trial, publicity of judicial proceedings, and the independence of the judiciary put effectively in force. Curiously enough, the drafting and advocacy of the bill fell principally to a minister, Alberti, who was on the point of being proved one of the most deliberate criminals of the generation. The measure, which comprised 1,015 clauses, introduced no modification in the existing hierarchy of tribunals, but it readjusted in detail the functions of the several courts and defined more specifically the procedure to be employed in the trial of various kinds of cases. One provision which it contains is that a jury shall consist of twelve men, that any person who is eligible for election to the Folkething is eligible for selection as a juryman, and that jury service is obligatory. On the ground that it fell short of fulfilling the essential pledges of the constitution, the Radical and Socialist members of the Rigsdag vigorously opposed the measure.[2]

**627. Local Government.**—For administrative purposes the kingdom is divided into 18 Amter, or counties. In each is an Amtmand, or governor, who is appointed by the crown, and an Amtsrad, or council, composed of members elected indirectly within the county. The counties are divided into hundreds, which exist principally for judicial purposes, and the hundreds are divided into some 1,100 parishes. In each town is a burgomaster, who is appointed by the crown, and who governs with or without the assistance of aldermen. Copenhagen, however, has an administrative system peculiar to itself. Its burgomaster, elected by the town council, is merely confirmed by the crown.

[1] Arts. 68–74. Dodd, Modern Constitutions, I., 276–277.

[2] The bill was carried in the Folkething by a vote of 57 to 42; in the Landsthing by a vote of 38 to 5.

# CHAPTER XXXI

## THE SWEDISH-NORWEGIAN UNION AND THE GOVERNMENT OF NORWAY

### I. Political Development to 1814

**628. Sweden in Earlier Modern Times.**—During the centuries which intervened between the establishment of national independence under the leadership of Gustavus Vasa in 1523 and the end of the Napoleonic era, the political system of the kingdom of Sweden oscillated in a remarkable manner between absolutism and liberalism. The establishment of a national parliamentary assembly antedated the period of union with Denmark (1397–1523); for it was in 1359 that King Magnus, embarrassed by the unmanageableness of the nobility and obliged to fall back upon the support of the middle classes, summoned representatives of the towns to appear before the king along with the nobles and clergy, and thus constituted the first Swedish Riksdag. By an ordinance of Gustavus Adolphus in 1617, what had been a turbulent and ill-organized body was transformed into a well-ordered national assembly of four estates—the nobles, the clergy, the burghers, and the peasants—each of which met and deliberated regularly apart from the others. There was likewise a Rigsrad, or senate, which comprised originally a grand council representative of the semi-feudal landed aristocracy, but which by the seventeenth century had come to be essentially a bureaucracy occupying the chief offices of state at the pleasure of the crown. Under Gustavus Adolphus and his earlier successors, especially Charles XI. (1660–1697), however, the government took on the character of at least a semi-absolutism. The Rigsdag retained the right to be consulted upon important foreign and legislative questions, but the power of initiative was exercised by the sovereign alone. The Riksdag of 1680 admitted that the king was responsible for his acts only to God, and that between him and his people no intermediary was needed; and in 1682 the same body recognized as vested in the crown the right freely to interpret and amend the law.[1]

[1] Bain, Scandinavia, Chaps. 8, 11; Cambridge Modern History, IV. Chaps. 5, 20; Lavisse et Rambaud, Histoire Générale, III., Chap. 14; IV.; Chap. 15.

**629. Weakness of the Monarchy in the Eighteenth Century.**—A new chapter in Swedish constitutional history was inaugurated by the calamities incident to the turbulent reign of the Mad King of the North, Charles XII. (1697–1718), and the Great Northern War, brought to a culmination by the cession to Russia in the Peace of Nystad, August 30, 1721, of all the Baltic provinces which Sweden had possessed. Early in the reign of Frederick I. (1720–1751), chiefly by laws of 1720–1723, the government was converted into one of the most limited of monarchies in Europe. The sovereign was reduced, indeed, to a mere puppet, his principal function being that of presiding over the deliberations of the Rigsrad. Virtually all power was vested in the Riksdag. A secret committee representative of the four estates prepared all measures, controlled foreign relations, and appointed all ministers, and laws of every kind were enacted by the affirmative vote of three of the four orders. The constitutional system, while nominally monarchical, became essentially republican. In operation, however, it was hopelessly cumbersome, and throughout half a century the political activities of the kingdom comprised little more than a wearisome struggle of rival factions.[1]

Under Gustavus III. (1771–1792), nephew of Frederick the Great of Prussia, the pendulum swung back again distinctly toward absolutism. The Riksdag, according to its custom, sought at the opening of the reign to impose upon the new sovereign a renunciatory coronation oath. Gustavus, however, raised objection, and the contest became so keen that the king resolved upon a *coup d'état* whereby to accomplish a restoration of the pristine independence and vigor of the royal office. The plan was laid with care and was executed with complete success. August 20, 1772, there was forced upon the estates, almost at the bayonet's point, a constitution which had been contrived specifically to transform the weak and disjointed quasi-republic into a compact monarchy. The monarchy was to be limited, it is true, but the framework of the state was so reconstructed that the balance of power was certain to incline toward the crown. Without the approval of the Riksdag no law might be enacted and no tax levied; but the estates might be summoned and dismissed freely by the king, and in him was vested exclusively the power of legislative initiative. Under this instrument the government of Gustavus III., and in even a larger measure that of Gustavus IV. (1792–1809),[2] was pronouncedly autocratic.

[1] Bain, Scandinavia, Chaps. 12–13; Cambridge Modern History, V., Chaps. 18–19; Lavisse et Rambaud, Histoire Générale, VI., Chap. 17.

[2] Gustavus IV., being a minor at his accession, did not assume control of the government until November 1, 1796.

**630. Sweden in the Napoleonic Period.**—Sweden is one of the many European nations which in the course of the Napoleonic period acquired a new constitutional system, but one of the few in which the fundamentals of the system at that time established have been maintained continuously to the present day. Sweden was drawn into the Napoleonic wars at an early stage of their progress. December 3, 1804, Gustavus IV. cast in his fortunes on the side of the foes of France, and although in 1806–1807 Napoleon sought to detach him from the Allies, all effort in that direction failed. The position of Gustavus, however, was undermined in his own country by his failure to defend Finland on the occasion of the Russian invasion of 1808, and March 29, 1809, yielding to popular pressure, and hoping to save the crown for his son, he abdicated. By the Riksdag the royal title, withheld from the young Prince Gustavus, was bestowed upon the eldest brother of Gustavus III., who, under the name of Charles XIII., was proclaimed June 5. On the same day the Riksdag ratified formally an elaborate *regerings-formen*, or fundamental law, which, amended from time to time, has been preserved to the present day as the constitution of the kingdom.[1]

**631. Constitutional Development of Norway to 1814.**—During more than four centuries, from the Union of Kalmar, in 1397, to the Treaty of Kiel, January 14, 1814, Norway was continuously subordinated more or less completely to Denmark. The political history and constitutional development of the nation, therefore, had little opportunity to move in normal channels. Prior to the Union the royal power was considerable, and at times virtually absolute, although an ever present obstacle to the consolidation of the monarchy was the independent spirit of the nobility. By the fourteenth century, however, the old landed aristocracy, decimated by civil war and impoverished by the loss of the fur trade to Russia, had been so weakened that it no longer endangered in any degree the royal supremacy. From the end of the thirteenth century we hear of a *palliment*, or parliament, which was summoned occasionally at the pleasure of the king. But at no time had this gathering assumed the character of an established national legislative body.

From the point of view of political status the history of Norway under the Union falls into four fairly clearly marked periods. The first, extending from 1397 to the accession of Christian I. in 1450, culminated in an unsuccessful attempt on the part of the Norwegians to throw off the Danish yoke. The second, extending from 1450 to the

[1] See p. 589. Bain, Scandinavia, Chap. 14; Lavisse et Rambaud, Histoire Générale, VII., Chap. 23; VIII., Chap. 23.

recognition of Frederick I. as king in Norway in 1524, was marked by a still closer union between the two kingdoms. The third, beginning with the accession of Frederick and closing with the Danish revolution of 1660, was a period in which, largely in consequence of the Protestant Revolt, Norway was reduced virtually to the level of a subjugated province. The fourth, inaugurated by the rehabilitation of the monarchy in Denmark in 1660, witnessed the raising of Norway from the status of subjection to the rank of a sovereign, hereditary kingdom on a footing of approximate equality with Denmark. The period closed with a widespread revival of the nationalist spirit, one of the first fruits of which was the obtaining, in 1807, of an administrative system separate from that of Denmark and, in 1811, of the privilege of founding at Christiania a national university.[1]

## II. The Swedish-Norwegian Union, 1814–1905

**632. Bernadotte and the Treaty of Kiel.**—As has been pointed out, the kingdom of Sweden acquired independence of Denmark near the end of the first quarter of the sixteenth century. The liberation of Norway was delayed until the era of Napoleon, and when it came it meant, not the independence which the Norwegians craved, but forced affiliation with their more numerous and more powerful neighbors on the east. The succession of events by which the new arrangement was brought about was engineered principally by Napoleon's ex-marshal Bernadotte. May 28, 1810, Prince Charles Augustus of Augustenburg, whom the Riksdag had selected as heir to the infirm and childless Charles XIII., died, and after a notable contest, Bernadotte was agreed upon unanimously by the four estates (August 21) as the new heir. November 5 the adventuresome Frenchman received the homage of the estates and was adopted by the king as crown prince under the name of Charles John.[2] By reason of the infirmity of the sovereign, Bernadotte acquired almost at once virtual control of the government. From the outset he believed it to be impossible for Sweden to recover Finland; but he believed no less that she might recoup herself, with the assent of the powers, by the acquisition of the Danish dominion of Norway. In March and April, 1813, Great Britain and Russia were brought to the point of giving the desired assent, and by the Treaty of Kiel, January 14, 1814, the king of Den-

[1] Bain, Scandinavia, Chaps. 4, 5, 7, 10, 15; H. H. Boyesen, A History of Norway from the Earliest Times (2d ed., London, 1900).

[2] Upon the death of Charles XIII., February 5, 1818, the "prince" succeeded to the throne under the name of Charles XIV. He reigned until 1844.

mark, under pressure applied by the Allies, made the desired surrender.[1]

**633. The Movement for Norwegian Independence: the Constitution of 1814.**—In Norway there was small disposition to accept the new arrangement. Instead there was set up the theory that when the Danish sovereign renounced his claim to the throne of his northern dominion the Norwegian state legally reverted forthwith to its former condition of independence. Upon this assumption 112 representatives of the nation, of whom 82 were opposed to union with Sweden, met at the Eidsvold iron-works near Christiania, and drew up a liberal constitution modelled principally on the French instrument of 1791, under which was established a national Storthing, or parliament. May 17, furthermore, Prince Christian Frederick, the Danish governor of the country, was elected king of Norway. From the Swedish point of view these sovereign acts were absolutely invalid, and upon Norway's rejection of mediation by the powers Bernadotte invaded the country at the head of a Swedish army. In a short, sharp campaign the Norwegians were hopelessly beaten,[2] and the upshot was that Christian Frederick was forced to abdicate (October 7, 1814), the Storthing was compelled to give its assent to the union with Sweden (October 20), the Eidsvold constitution was revised (November 4) to bring it into accord with the conditions of the union, and the Storthing went through the formality of electing Charles XIII. king of Norway and of recognizing Bernadotte as heir to the throne. Fifty of the one hundred ten articles of the Eidsvold constitution were retained unaltered; the remainder were revised or omitted. Amended upon a number of subsequent occasions, this constitution of November 4, 1814, has continued in operation to the present day as the *Grundlov*, or fundamental law, of the Norwegian state. No constitution was ever born of a more interesting contest for national dignity and independence.

**634. Nature of the Union.**—The union of the two states was of a purely personal character; that is to say, it was a union solely through the crown. Each of the kingdoms maintained its own constitution, its own ministry, its own legislature, its own laws, its own financial system, its own courts, its own army and navy. The legal basis of the affiliation was the *Riksakt*, or Act of Union, of August, 1815,—an ultimate agreement between the two states which in Norway was

[1] C. Schefer, Bernadotte roi (Paris, 1899); L. Pingaud, Bernadotte, Napoléon, et les Bourbons (Paris, 1901); G. R. Lagerhjelm, Napoleon och Carl Johan, 1813 (Stockholm, 1891).

[2] G. Björlin, Der Krieg in Norwegen, 1814 (Stuttgart, 1895).

formally adopted by the Storthing as a part of the Norwegian fundamental law, but which in Sweden was regarded as a treaty, and hence was never incorporated by the Rigsdag within the constitution. In each of the states the functions and status of the crown were regulated by constitutional provisions; and the character of the royal power was by no means the same in the two. In Sweden, for example, the king possessed independent legislative power and his veto was absolute; in Norway he possessed no such independent prerogative and his veto was only suspensive. There was a common ministry of war and another of foreign affairs; beyond this the functions of a common administration were vested in a complicated system of joint councils of state. Matters of common concern lying outside the jurisdiction of the crown were regulated by concurrent resolutions or laws passed by the Riksdag and the Storthing independently. But in all matters of internal legislation and administration the two kingdoms were as separate as if no legal relations had been established between them. There was not even a common citizenship.

**635. Causes of Friction.**—From the outset the union was menaced by perennial friction. Differences between the two kingdoms in respect to language, manners, and economic concerns were pronounced; differences of social and political ideas were still more considerable; differences in governmental theories and institutions were seemingly irreconcilable. In Sweden the tone of the political system, until far in the nineteenth century, was distinctly autocratic, and that of the social system aristocratic; in Norway the principle that preponderated was rather that of democracy. Between the two states there was disagreement upon even the fundamental question of the nature of the union. The Swedish contention was that at the Peace of Kiel Norway was ceded to Sweden by Denmark and that the mere fact that, following the unsuccessful attempt of the Norwegians to establish their independence, Sweden had chosen to grant the affiliated kingdom a separate statehood and local autonomy did not contravene Norway's essentially subordinate position within the union. The Norwegians, on the other hand, maintained that, in the last analysis, they comprised an independent nation and that their union with Sweden rested solely upon their own sovereign decision in 1814 to accept Charles XIII. as king; from which the inference was that Norway should be dealt with as in every respect co-ordinate with Sweden. The conflicts which sprang from these differences of conception were frequent and serious. There was no disguising the fact that the administration of the joint affairs of the kingdoms was conducted from a point of view that was essentially Swedish, and the history of

the union throughout the period of its existence is largely a story of the struggle on the part of the Norwegians, through the medium of the Storthing, to attain in practice the fully co-ordinate position which they believed to be rightfully theirs. Again and again amendments to the constitution in the interest of the royal power were submitted by successive sovereigns, only to be rejected by the Storthing.

In 1860 the Swedish estates insisted upon a revision of the Act of Union which should include the establishment of a common parliament for the two countries, in which, in approximate accordance with population, there would be twice as many Swedish members as Norwegian. The Storthing, naturally enough, rejected the proposition. In 1869 the Storthing fortified its position by adopting a resolution in accordance with which its sessions, theretofore triennial, were made annual, and in 1871 the first annual Storthing rejected an elaborate modification of the Act of Union, to which the Conservative ministry of Stang had been induced to lend its support, whereby the supremacy of Sweden would have been recognized explicitly and the bonds of the union would have been tightened correspondingly. Two years later the new sovereign, Oscar II. (1872–1907), gave reluctant assent to a measure by which the office of viceroy in Norway was abolished. Thereafter the head of the government at Christiania was the president of the ministry, or premier; and, following a prolonged contest, in the early eighties there was forced upon the crown the principle of ministerial responsibility (in Norway).

**636. The Question of the Consular Service.**—The rock upon which the union foundered eventually, however, was Norway's participation in the management of diplomatic and consular affairs. The subject was one which had been left in 1814 without adequate provision, and throughout the century it gave rise to repeated difficulties. In 1885, and again in 1891, there was an attempt to solve the problem, but upon each occasion the only result was a deadlock, the Storthing insisting upon, and the Swedish authorities denying, Norway's right, as an independent kingdom, to participate equally with Sweden in the conduct of the foreign relations of the two states. In 1892 the Storthing resolved upon the establishment of an independent Norwegian consular service; but to this the king would not assent. Norwegian trading and maritime interests had come to be such that, in the opinion of the commercial and other influential classes of the kingdom, separateness of consular administration was indispensable, and upon the success of this reform was made to hinge eventually the perpetuity of the union itself. Throughout several years the deadlock continued. At the Norwegian elections of 1894 and 1897 the Liberals were over-

whelmingly successful, and it was made increasingly apparent that the Norwegian people were veering strongly toward unrestricted national independence. July 28, 1902, a lengthy report was submitted by a Swedish-Norwegian Consular Commission, constituted upon Swedish initiative earlier in the year, in which the practicability of two entirely separate consular systems was asserted, and, March 24, 1903, an official *communiqué* announced the conclusion of an agreement between representatives of the two countries under which there were to be worked out two essentially identical codes of law for the government of the two systems. Upon the nature of these codes, however, there arose serious disagreement, and when, in 1904, the Boström ministry of Sweden submitted as an absolute condition that any Norwegian consul might be removed from office by the Swedish foreign minister, the entire project was brought to naught.

**637. The Norwegian Declaration of Independence: the Separation.**—March 1, 1905, the Norwegian ministry presided over by Hagerup resigned and was replaced by a ministry made up by Christian Michelsen, which included representatives of both the Liberal and Conservative parties. May 23 the Storthing, by unanimous vote, passed a new bill for the establishment of Norwegian consulships. The king, four days later, vetoed the measure; whereupon the Michelsen government resigned. The king refused to accept the resignation; the ministers refused to reconsider it. June 7 Michelsen and his colleagues placed their resignation in the hands of the Storthing, and that body, impelled at last to cut the Gordian knot, adopted by unanimous vote a resolution to the effect (1) that, the king having admitted his inability to form a Government, the constitutional powers of the crown had become inoperative, and (2) that Oscar II. having ceased to act as king of Norway, the union with Sweden was to be regarded as *ipso facto* dissolved. By another unanimous vote the ministerial group was authorized to exercise temporarily the prerogatives hitherto vested in the sovereign.

On the part of certain elements in Sweden there was a disposition to resist Norwegian independence, and for a time there was prospect of war. The mass of the people, however, cared but little for the maintenance of the union. The prevailing national sentiment was expressed with aptness by the king himself when he affirmed that "a union to which both parties do not give their free and willing consent will be of no real advantage to either." June 20 the Riksdag was convened in extraordinary session to take under advisement the situation. Dreading war, this body eventually decided to sanction negotiations looking toward a separation, provided, however, that the

Norwegian people, either through the agency of a newly elected Storthing or directly by referendum, should avow explicitly their desire for independence. During a recess of the Riksdag a Norwegian plebiscite was taken, August 13, with the result that 368,211 votes were cast in favor of the separation and but 184 against it. Two weeks later eight commissioners representing the two states met at Karlstad, in Sweden, and negotiated a treaty, signed September 23, wherein the terms of the separation were specifically fixed. This instrument, approved by the Storthing October 9 and by the reassembled Riksdag October 16, provided for the establishment of a neutral, unfortified zone on the common frontier south of the parallel 61° and stipulated that all differences between the two nations which should prove impossible of adjustment by direct negotiation should be referred to the permanent court of arbitration at the Hague, provided such differences should not involve the independence, integrity, or vital interests of either nation. October 27 King Oscar formally relinquished the Norwegian crown.

## III. The Norwegian Constitution—Crown and Ministry

**638. The Revised Fundamental Law.**—In Norway there was widespread sentiment in favor of the establishment of a republic. The continuance of monarchy was regarded, however, as the course which might be expected to meet with most general approval throughout Europe, and in a spirit of concilation the Storthing tendered to King Oscar an offer to elect as sovereign a member of the Swedish royal family. The offer was rejected; whereupon the Storthing selected as a candidate Prince Charles, second son of the then Crown Prince Frederick of Denmark, the late King Frederick VIII. November 12 and 13, 1905, the Norwegian people, by a vote of 259,563 to 69,264, ratified the Storthing's choice, the advocates of a republic recording some 33,000 votes. The new sovereign was crowned at Trondhjem June 22, 1906. By assuming the title of Haakon VII. he purposely emphasized the essential continuity of the present Norwegian monarchy with that of mediæval times.[1]

[1] Haakon VI. reigned 1343–1380, shortly before the Union of Kalmar. For brief accounts of the relations of Sweden and Norway under the union see Bain, Scandinavia, Chap. 17; Cambridge Modern History, XI., Chap. 24, XII., Chap. 11; Lavisse et Rambaud, Histoire Générale, X., Chap. 18; XI., Chap. 12; XII., Chap. 7. The best general treatise is A. Aall and G. Nikol, Die Norwegische-schwedische Union, ihr Bestehen und ihre Lösung (Breslau, 1912). From the Norwegian point of view the subject is well treated in F. Nansen, Norge og Foreningen med Sverige (Christiania, 1905), in translation, Norway and the Union with Sweden (London,

The fundamental law of Norway to-day is the Eidsvold constitution of April, 1814, revised, November 4 following, to comport with the conditions of the union with Sweden. The original instrument was not only democratic in tone, but doctrinaire. With little in the nature of native institutions upon which to build, the framers laid hold of features of the French, English, American, and other foreign systems, in the effort to transplant to Norwegian soil a body of political forms and usages calculated to produce a high order of popular government. No inconsiderable portion of these forms and usages survived the revision enforced by the failure to achieve national independence. Of this portion, however, several proved impracticable, and constitutional amendments after 1814 were numerous. Upon the establishment of independence in 1905 the fundamental law was modified further by the elimination from it of all reference to the former Swedish affiliation. The constitution to-day comprises one hundred twelve articles, of which forty-six deal with the executive branch of the government, thirty-seven with citizenship and the legislative power, six with the judiciary, and twenty-three with matters of a miscellaneous character. The process of amendment is appreciably more difficult than that by which changes may be introduced in the Swedish instrument.[1] Proposed amendments may be presented in the Storthing only during the first regular session following a national election, and they may be adopted only at a regular session following the ensuing election, and by a two-thirds vote. It is required, furthermore, that such amendments "shall never contravene the principles of the constitution, but shall relate only to such modifications in particular provisions as will not change the spirit of the instrument."[2]

1905); from the Swedish, in K. Nordlung, Den svensk-norska krisen (Upsala and Stockholm, 1905), in translation, The Swedish–Norwegian Union Crisis, A History with Documents (Stockholm, 1905). Worthy of mention are R. Pillons, L'Union scandinave (Paris, 1899); A. Mohn, La Suède et la révolution norvegienne (Geneva and Paris, 1906); and Jordan, La séparation de la Suède et de la Norwège (Paris, 1906). A useful survey is P. Woultrin, in *Annales des Sciences Politiques*, Jan. 15 and March 15, 1906.

[1] See p. 589.

[2] Art. 112. Dodd, Modern Constitutions, II., 143. An English version of the Norwegian constitution is printed in Dodd, ibid., II., 123–143, and in H. L. Braekstad, The Constitution of the Kingdom of Norway (London, 1905). The standard treatise on the Norwegian system of government is T. H. Aschehoug, Norges Nuvaerende Statsforfatning (2d ed., Christiania, 1891–1893); but a more available work is an earlier one by the same author, Das Staatsrecht der vereinigten Königreiche Schweden und Norwegen (Freiburg, 1886), in Marquardsen's Handbuch. The most recent and, on the whole the most useful, treatise is B. Morgenstierne, Das Staatsrecht des Königreichs Norwegen (Tübingen, 1911).

**639. The Crown and the Council.**—The government of Norway, like that of Sweden and of Denmark, is in form a limited hereditary monarchy. The popular element in it is both legally and actually more considerable than in the constitutional system of either of the sister Scandinavian states; none the less, the principle of monarchy is firmly entrenched, and, as has been pointed out, not even the overturn of 1905 endangered it seriously. The constitution contains provisions respecting the succession to the throne, the conduct of affairs during a minority, and the establishment of a regency, which need not be recounted here, but which are designed to meet every possible contingency. In the event of the absolute default of a legal successor the Storthing is empowered to elect.

Supreme executive authority is vested in the king, who must be an adherent of the Lutheran Church, and who at his accession is required to take oath in the presence of the Storthing to govern in conformity with the constitution and laws. Associated with the king is a Council of State, upon which, since the king may be neither censured nor impeached, devolves responsibility for virtually all executive acts. The Council consists of a minister of state, or premier, and at least seven other members. All are appointed by the crown, and all must be Norwegian citizens not less than thirty years of age and adherents of the established Lutheran faith. The king may apportion the business of state among the councillors as he desires. There are at present, in addition to the ministry of state, eight ministerial portfolios, i. e., Foreign Affairs, Justice, Worship and Instruction, Agriculture, Labor, Finance, Defense, and Commerce, Navigation and Industry. All ministers are regularly members of the Storthing, though by the constitution the crown is authorized for special reasons to add to the Council members who possess no legislative seats. The heir to the throne, if eighteen years of age, is entitled to a seat in the Council, but without vote or responsibility.

**640. The Exercise of Executive Powers.**—Most of the powers which are possessed by the king may be exercised by him only in conjunction with the Council. Like the fundamental law of Sweden, that of Norway stipulates that, while it shall be the duty of every member of the Council to express his opinion freely, and of the king to give ear to all such opinions, it "shall remain with the king to decide according to his own judgment." [1] None the less, the acts of the crown are, as a rule, those not only, legally, of the king *in* council but, actually, of the king *and* council. With the exception of military commands, all orders issued by the king must be countersigned by the minister of state, and

[1] Art. 30. Dodd, Modern Constitutions, II., 128.

ministers may be impeached at any time by the Odelsthing before the Rigsret, or Court of Impeachment; so that, in effect, there is a close approach to the parliamentary system of ministerial responsibility. Under these conditions, the crown appoints all civil, ecclesiastical, and military officials; removes higher officials (including the ministers) without previous judicial sentence; pardons offenders after conviction; regulates religious services, assemblies, and meetings; issues and repeals regulations concerning commerce, customs, industry, and public order; and enforces the laws of the realm. The king is commander-in-chief of the land and naval forces, though these forces may not be increased or diminished, or placed at the service of a foreign sovereign or state, without the consent of the Storthing. And the king has the power to mobilize troops, to commence war and conclude peace, to enter into and to withdraw from alliances, and to send and to receive ambassadors.[1]

## IV. The Storthing—Political Parties

**641. Electoral System: the Franchise.**—Among the legislatures of Europe that of Norway is unique. In structure it represents a curious cross between the principles of unicameral and bicameral organization. It comprises essentially a single body, which, however, for purely legislative purposes is divided into two chambers, or sections, the Lagthing and the Odelsthing. This division is made subsequent to the election of the members, so that representatives are chosen simply to the Storthing as a whole. The elections take place every third year. There are forty-one urban, and eighty-two rural, districts, and every district returns one member—a total of 123.

Formerly the franchise rested, as in Sweden, upon a property qualification; but by a series of suffrage reforms within the past decade and a half it has been brought about that in respect to electoral privileges Norway is to-day the most democratic of European countries. In 1898 the Liberal government of Steen procured the enactment of a measure which long had occupied a leading place in the programme of the radical elements. By it the parliamentary franchise was conferred upon all male citizens of a minimum age of twenty-five years who have resided at least five years in Norway and who have suffered no judicial impairment of civil rights. The effect was to double at a stroke the national electorate. In 1901 the same Government carried an important bill by which the suffrage in municipal elections was conferred upon male citizens without restriction (save that of age), upon all unmarried

[1] Arts. 16, 17, 20–26. Dodd, Modern Constitutions, II., 125–127.

women twenty-five years of age who pay taxes on an annual income of not less than 300 kronor, and upon all married women of similar age whose husbands are taxed in equivalent amounts. During ensuing years there was widespread agitation in behalf of the parliamentary franchise for women, and the Liberal party made this one of the principal items in its programme. June 14, 1907, by a vote of 73 to 48, the Storthing rejected a proposal that women be given the parliamentary franchise on the same terms as men, but by the decisive majority of 96 to 25 it conferred the privilege upon all women who were in possession of the municipal franchise under the law of 1901. The rapidity with which woman's suffrage sentiment had developed is indicated by the fact that as late as 1898 a proposal looking toward the including of women in the parliamentary electorate had received in the Storthing a total of but 33 votes. By the legislation of 1907 Norway became the first of European nations to confer upon women, under any conditions, the privilege of voting for members of the national legislative body and of sitting as members of that body. At the elections of 1909, the first in which women participated, no revolutionizing effects were observed. The electorate, however, was increased by approximately 300,000, which was somewhat over half of the kingdom's total female population of the requisite age.[1] April 30, 1910, the Constitutional Committee of the Storthing, by a majority of four to three, recommended that parliamentary suffrage be extended to women on equal terms with men, i. e., without reference to tax-paying qualifications. The recommendation was rejected, but during the next month the Odelsthing voted, 71 to 10, and the Lagthing, 24 to 7, to apply the principle of it in municipal elections. Thus the municipal electorate was enlarged by approximately 200,000, and the way was prepared, as many believe, for the adoption eventually of the Committee's original recommendation. Prior to an amendment of May 25, 1905, parliamentary elections were indirect. In the urban districts one elector was chosen for every fifty voters, and in the rural districts, one for every one hundred. Now, however, elections are direct. Each petty political unit having a municipal government of its own comprises a voting precinct. If at the first ballot no candidate in the district receives a majority of all the votes cast, a second ballot is taken, when a simple plurality is decisive. A noteworthy feature of the system is the fact that voters who on account of illness, military service, or other valid reason, are unable to appear at the polls are permitted to transmit their votes in writing to the proper election officials.

[1] At the election of 1909 the total number of parliamentary electors was 785,358. The number of votes recorded, however, was but 487,193.

**642. Qualifications, Sessions, and Organization.**—No one may be chosen a member of the Storthing unless he or she is thirty years of age, a resident of the kingdom of ten years' standing, and a qualified voter in the election district in which he or she is chosen; but a former member of the Council of State, if otherwise qualified, may be elected to represent any district.[1] Under recent legislation every member of the Storthing receives a salary of three thousand kroner a year, in addition to travelling expenses. The Storthing meets in regular session annually, without regard to summons by the crown. The constitution fixed originally as the date of convening the first week-day after October 10 of each year; but, May 28, 1907, the Storthing adopted an amendment whereby, beginning with 1908, the meeting time was changed to the first week-day after January 10. For sufficient reasons, an extraordinary session may be convoked by the king at any time. The length of sessions is indeterminate, except that an extraordinary session may be adjourned by the crown at will, and no session, extraordinary or regular, may be prolonged beyond two months without the king's consent. At its first regular session following a general election the Storthing divides itself into two chambers. A fourth of the membership is designated to constitute the Lagthing, the remaining three-fourths comprise the Odelsthing; and the division thus effected holds until the succeeding election. Each chamber elects its own president, secretary, and other officers. Sessions are public, and business may not be transacted unless at least two-thirds of the members are present.

**643. Powers and Procedure of the Storthing.**—The powers of the Storthing, as enumerated in the constitution, include the enactment and the repeal of laws; the levying of taxes, imposts, and duties; the appropriating and the borrowing of money; the regulating of the currency; the examining of treaties concluded with foreign powers; the inspection of the records of the Council of State; the making of provision for the auditing of the national accounts; and regulation of the naturalization of foreigners.[2] All bills are required to be presented first in the Odelsthing, by one of the members of the body, or by the Government, through a councillor of state. Only in the event that a measure passes the Odelsthing is it presented at all in the Lagthing, for the sole function of the smaller chamber is to act as a check upon the larger one. The Lagthing may either approve or reject a bill which the Odelsthing submits, but may not amend it. A measure rejected is returned, with reasons for the rejection. Three courses are then open to the Odelsthing: to drop the measure, to submit it in amended form,

[1] Arts. 59–64. Dodd, Modern Constitutions, II., 134–135.
[2] Art. 75. Ibid., II., 136.

or to resubmit it unchanged. When a bill from the Odelsthing has been twice presented to the Lagthing, and has been a second time rejected, the two chambers are convened in joint session, and in this consolidated body proposals are carried by a two-thirds vote. All questions pertaining to the revision of the constitution are required to be voted upon in this manner.

**644. The Veto Power.**—A bill passed by the Storthing is laid forthwith before the king. If he approves it, the measure becomes law. If he does not approve it, he returns it to the Odelsthing with a statement of his reasons for disapproval. A measure which has been vetoed may not again be submitted to the king by the same Storthing. The royal veto, however, is not absolute. "If," says the constitution, "a measure has been passed without change by three regular Storthings convened after three separate successive elections, and separated from each other by at least two intervening regular sessions, without any conflicting action having in the meantime been taken in any session between its first and last passage, and is then presented to the king with the request that his majesty will not refuse his approval to a measure which the Storthing, after the most mature deliberation, considers beneficial, such measure shall become law even though the king fails to approve it. . . ."[1] In the days of the Swedish union the precise conditions under which the royal veto might be exercised were the subject of interminable controversy. In respect to ordinary legislation the stipulations of the constitution were plain enough, but in respect to measures which in essence comprised constitutional amendments the silence of that instrument afforded room for wide differences of opinion. An especially notable conflict was that which took place in the early eighties respecting a proposal to admit the Norwegian ministers to the Storthing with the privilege of participation in the deliberations of that body. The measure was passed by overwhelming majorities by three Storthings after three successive general elections, and in accordance with the constitution, under the Norwegian interpretation, it ought thereupon to have been recognized as law. The king, however, not only refused to approve the bill, but asserted firmly that his right to exercise an absolute veto in constitutional questions was "above all doubt"; and when the Storthing pronounced the measure law without the royal sanction, both crown and Swedish ministry avowed that by them it would not be recognized as valid. In the end (in 1884) the Storthing won, but the issue was revived upon numerous occasions. Under the independent monarchy of 1905 there has been no difficulty of the sort; nor, in view of the eminently pop-

[1] Art. 79. Dodd, Modern Constitutions, II., 137–138.

ular aspect of kingship in Norway to-day, is such difficulty likely to arise.

**645. Political Parties: Liberals and Conservatives.**—Prior to the accession of Oscar II., in 1872, the preponderating fact in the political development of the kingdom was the gradual growth of parliamentary power on the part of the representatives of the peasantry. Between 1814 and 1830 the business of the Storthing was conducted almost wholly by members of the upper and official classes, but during the decade 1830–1840 the peasantry rose to the position of a highly influential class in the public affairs of the nation. The first of the so-called "peasant Storthings" was that of 1833. In it the peasant representatives numbered forty-five, upwards of half of the body. Under the leadership of Ole Ueland, who was a member of every Storthing between 1833 and 1869, the peasant party made its paramount issue, as a rule, the reduction of taxation and the practice of economy in the national finances.

After 1870 the intensification of the Swedish-Norwegian question led to the drawing afresh of party lines, and until the separation of 1905, the new grouping continued fairly stable. By the amalgamation of the peasant party, led by Jaabaek, and the so-called "lawyers" party, led by Johan Sverdrup, there came into being in the seventies a great Liberal party (the Venstre, or Left) whose fundamental purpose was to safeguard the liberties of Norway as against Swedish aggression. Until 1884 this party of nationalism was obliged to content itself with the rôle of opposition. Governmental control was lodged as yet in the Conservatives, whose attitude toward Sweden was distinctly conciliatory. In 1880 the Conservative leader, Frederick Stang, resigned the premiership, but his successor was another Conservative, Selmer. At the elections of 1882 the Liberals obtained no fewer than 82 of the 114 seats in the Storthing. Still the Conservatives refused to yield. In the meantime the Odelsthing had brought the entire ministry to impeachment before the Rigsret for having advised the king to interpose his veto to the measure giving ministers seats in Parliament. Early in 1883 Selmer and seven of his colleagues were sentenced to forfeiture of their offices, and the remaining three were fined. March 11, 1884, the king announced his purpose to abide by the decision of the court, distasteful to him as it was, and the Selmer cabinet was requested to resign. An attempt to prolong yet further the tenure of the Conservatives failed completely, and, June 23, 1884, the king sent for Sverdrup and authorized the formation of the first Liberal ministry in Norwegian history. The principal achievement of the new government was the final enactment of the

long-contested measure according parliamentary seats to ministers. To this project the king at last gave his consent.

**646. The Ministerial Succession to 1905.**—The Sverdrup ministry endured almost exactly four years. In 1887 the party supporting it split upon a question of ecclesiastical policy, and at the elections of 1888 the Conservatives obtained fifty-one seats, while of the sixty-three Liberals returned not more than twenty-six were really in sympathy with Sverdrup. July 12, 1889, Sverdrup and his colleagues resigned. Then followed a rapid succession of ministries, practically every one of which met its fate, sooner or later, upon some question pertaining to the Swedish union: (1) that of Emil Stang [1] (Conservative), July 12, 1889, to March 5, 1891; (2) that of Johannes Steen (Liberal), which lasted until April, 1893; (3) a second Stang ministry, to February, 1895; and (4) the coalition ministry of Professor Hagerup, to February, 1898. At the elections of 1897 the Liberals won a signal victory, carrying seventy-nine of the one hundred fourteen seats, and in February of the next year there was established a second Steen ministry, under whose direction, as has appeared, there was carried the law introducing manhood suffrage. Steen retired in April, 1902, and another Liberal government, that of Blehr, held office until October, 1903. At the elections of 1903 the Conservatives and Moderates obtained sixty-three seats, the Liberals fifty, and the Socialists four. A second Hagerup ministry filled the period between October 23, 1903, and March 1, 1905, and upon its retirement there was constituted, under circumstances which involved temporarily the all but complete annihilation of party lines, a coalition ministry under Christian Michelsen, at whose hands was brought about immediately the separation from Sweden and the constitutional readjustments of 1905.

**647. Party History Since the Separation.**—Following the subsidence of the excitement attending the separation the party alignments of earlier days tended rapidly to reappear. The old issues, however, had been disposed of, and in their place sprang up new ones, largely social and economic in character. At the elections of 1906 the subjects to which the Liberals gave most prominence were female suffrage, old age pensions, and sickness and unemployment insurance. The Michelsen government, which was essentially Conservative, issued a moderate reform programme and, alleging that former party lines were obsolete, called upon the citizens of all classes for support. The elections were notable chiefly by reason of the fact that the Social Democrats increased their quota in the Storthing to eleven. Despite

[1] Son of the earlier premier, Frederick Stang.

attacks of the more radical Left, the Michelsen cabinet stood firm until October 28, 1907, when the premier, by reason of ill health, was obliged to retire. Lövland, the minister of foreign affairs, succeeded; but, March 14, 1908, on a vote of want of confidence, his ministry was overthrown. A new cabinet was made up thereupon by the Liberal leader, Gunnar Knudsen. At the elections of 1909—the first in which women participated—this Liberal government lost the slender majority which it had possessed, and January 27, 1910, it resigned. Prior to the elections there were in the Storthing fifty-nine Liberals, fifty-four Conservatives and Moderates, and ten Social Democrats. Afterwards there were sixty-three Conservatives and Moderates, forty-seven Liberals, eleven Social Democrats, and two Independents. The popular vote of the Social Democrats was much in excess of that at any former election, but it was so distributed that the party realized from it but a single additional legislative seat. Upon the resignation of Knudsen the premiership was offered to Michelsen, whose health, however, precluded his accepting it. February 1, 1910, a Conservative-Moderate ministry was made up by Konow. February 19, 1912, it was succeeded by another ministry of the same type, under the premiership of the former president of the Storthing, Bratlie. At the elections of November 12, 1912, the Government lost heavily to the Liberals and to the Social Democrats. The socialist quota now numbers twenty-three.[1]

## V. The Judiciary and Local Government

**648. The Courts.**—For the administration of civil justice the kingdom of Norway is divided into 105 districts—eighty rural and twenty-five urban—in each of which there is a court of first instance composed of two justices chosen by the people. There are three higher tribunals, each with a chief justice and two associates. At the top stands the Höiesteret, or Supreme Court, consisting of a chief justice and six associates. The decisions of the Supreme Court may be neither appealed nor reviewed. For the trial of criminal cases, as regulated by law of July 1, 1887, there exist two types of tribunals: (1) the Lagmandsret, consisting of a president and ten jurors and (2) the Meddomsret, consisting of a judge and two non-professional assistants chosen for each case. There are in the kingdom four Lagdömmer, or jury districts, each divided into circuits corresponding, as a rule, to the counties. The jury courts take cognizance of the more serious cases.

[1] A brief account of Norwegian political parties to 1900 will be found in Lavisse et Rambaud, Histoire Générale, XII., 266–274; to 1906, in Cambridge Modern History, XII., 280–290. For additional references see pp. 578–579.

"No one," the constitution stipulates, "shall be tried except in accordance with law or punished except by virtue of a judicial sentence; and examination by means of torture is forbidden." [1] The members of the Lagthing, together with those of the Supreme Court, comprise the Rigsret, or Court of Impeachment. This tribunal tries, without appeal, cases involving charges of misconduct in office brought by the Odelsthing against members of the Council of State, the Supreme Court, or the Storthing.[2]

**649. Local Government.**—For purposes of administration the kingdom is divided into twenty regions—the cities of Christiania and Bergen and eighteen *Amter*, or counties. At the head of each is an Amtmand, or prefect, who is appointed by the crown. The principal local unit is the *Herred*, or commune, of which there are upwards of seven hundred, mostly rural parishes. As a rule, the government of the commune is vested in a body of twelve to forty-eight representatives and a Formaend, or council, elected by and from the representatives and comprising one-fourth of their number. Every third year the representatives choose from among the members of the council a chairman and a deputy chairman; and, under the presidency of the Amtmand, the chairmen of the rural communes within each county meet yearly as an Amtsthing, or county diet, and adopt the budget of the county. Since the municipal electoral law of 1910 members of the communal councils are chosen on a basis of universal suffrage for both men and women.

[1] Art. 96. Dodd, Modern Constitutions, II., 141.
[2] Arts. 86–87. Ibid., II., 139.

# CHAPTER XXXII

## THE GOVERNMENT OF SWEDEN

### I. The Constitution—the Crown and the Ministry

**650. The Fundamental Laws.**—The constitution of the kingdom of Sweden is one of the most elaborate instruments of its kind in existence. It comprises a group of fundamental laws of which the most comprehensive is the *regerings-formen* of June 6, 1809, in 114 articles.[1] Closely related are (1) the law of royal succession of September 26, 1810; (2) the law of July 16, 1812, on the liberty of the press; and (3) the law of June 26, 1866, providing for a reorganization of the legislative chambers. The organs and powers of government are defined in much detail, but there is nothing equivalent to the bill of rights which finds a place in most European constitutions. The process of amendment is easy and minor amendments have been frequent. Amendments may originate with either the crown or the legislative houses, and any amendment which receives the assent of the crown is declared to be adopted if, after having been proposed or approved by one Riksdag, it is sanctioned by the succeeding one. Through the reelection of the lower chamber, which must intervene between the two stages, the people have some opportunity to participate in the amending process.[2]

[1] See p. 572.

[2] Arts. 81–82. Dodd, Modern Constitutions, II., 240. In 1908 the ex-premier Staaf proposed that when the two chambers should disagree upon questions concerning the constitution and general laws resort should be had to a popular referendum; but the suggestion was negatived by the upper house unanimously and by the lower by a vote of 115 to 78. The text of the Swedish constitution, together with the supplementary fundamental laws of the kingdom, is contained in W. Upström, Sveriges Grundlager och konstitutionela stadgar jemte kommunallagarne samt Norges Grundlov (6th ed., Stockholm, 1903). An English version is printed in Dodd, Modern Constitutions, II., 219–251, and a French one in Dareste, Constitutions Modernes (3d ed.), II., 46–114. The best brief treatise upon Swedish constitutional history is P. Fahlbeck, La constitution suédoise et le parlementarisme moderne (Paris, 1905). The best description of the Swedish government as it was a quarter of a century ago is T. H. Aschehoug, Das Staatsrecht der vereinigten königreiche Schweden und Norwegen (Freiburg, 1886), in Marquardsen's Handbuch. The principal treatise in Swedish is C. Naumann, Sveriges statsförfatningsrätt (2d ed., Stockholm, 1879–1884).

**651. The Crown and the Ministry.**—At the head of the state stands the king. The monarchy is hereditary, and the crown is transmitted in the male line in the order of primogeniture. It is required that the king shall belong invariably to the Lutheran Church and that at his accession he shall take an oath to maintain scrupulously the laws of the land. With the king is associated a Statsrad, or Council of State, appointed by the crown "from among capable, experienced, honest persons of good reputation, who are Swedes by birth, and who belong to the pure evangelical faith." [1] By constitutional requirement the Council is composed of eleven members, one of whom is designated by the king as minister of state and president of the council, or premier. Of the eleven eight are heads of the departments, respectively, of Foreign Affairs, Justice, Land Defense, Naval Defense, Home Affairs, Finance, Agriculture, and Education and Ecclesiastical Affairs. The president and two other members are ministers without portfolio.

**652. The Exercise of Executive Powers.**—The powers of the Swedish executive are large. A few are exercised by the crown alone; some by the crown in conjunction with a small specified number of ministers; the majority by the crown and entire ministry conjointly. The king acts independently as the commander-in-chief of the land and naval forces of the kingdom. He may conclude treaties and alliances with foreign powers, after having consulted the minister of state, the minister of foreign affairs, and one other member of the Council. But if he wishes to declare war or to conclude peace he must convene in special session the full membership of the Council and must require of each member separately his opinion. "The king may then," it is stipulated, "make and execute such a decision as he considers for the best interests of the country." [2] In other words, in such a matter the king is obliged to consult, but not necessarily to be guided by, his ministerial advisers.

In general, it may be affirmed that this is the principle which underlies the organization of the Swedish executive. After having been prepared by one or more of the ministers, projects are considered by the king in council; but the right of ultimate decision rests with the king. It is thus that appointments to all national offices are made, titles of nobility are conferred, ordinances are promulgated, texts of new laws are framed, and questions of peace and war are determined. Nominally, the ministers are responsible to the Riksdag for all acts of the Government. But the constitution plainly states that after matters have been discussed in the Council "the king alone shall have

[1] Art. 4. Dodd, Modern Constitutions, II., 220.
[2] Art. 13. Ibid., 223.

the power to decide." [1] If the king's decision is palpably contrary to the constitution or the general laws, the ministers are authorized to enter protest. But that is all that they may do. The ministers have seats in the Riksdag, where they participate in debate and, in the name of the crown, initiate legislation. But their responsibility lies so much more directly to the king than to the legislature that what is commonly understood as the parliamentary system can hardly be said to exist in the kingdom.

## II. The Riksdag: Electoral System

**653. Establishment of the Bicameral System, 1866.**—Until past the middle of the nineteenth century the Swedish Riksdag, or diet, comprised still an assemblage of the four estates of the realm—the nobles, the clergy, the burghers, and the peasants. Throughout several decades a preponderating political question was that of substituting for this essentially mediæval arrangement a modern bicameral legislative system. In 1840 the Riksdag itself insisted upon a change, but the king, Charles XIV., refused to give his assent. During the reign of Oscar I. (1844–1859) several proposals were forthcoming, but none met with acceptance. It was left to Charles XV. (1859–1872), in collaboration with his able minister of justice, Baron Louis Gerhard de Geer, to effect the much-needed reform. In January, 1863, the Government submitted to the Estates a measure whereby there was to be constituted a Riksdag of two chambers—an upper one, which should be essentially an aristocratic senate, and a lower, whose members should be elected triennially by the people. In 1865 all of the four estates acted favorably upon the bill and, January 22, 1866, the measure was promulgated by the crown as an integral part of the fundamental law of the kingdom. September 1, 1866, there were held the first national elections under the new system. Since 1866 the upper chamber has represented principally the old estates of the nobles and clergy, and the lower has comprised the combined representatives of the townsmen and peasants. The one has been conservative, and even aristocratic; the other, essentially democratic. But the reform has contributed greatly to the breaking up of the ancient rigidity of the Swedish constitution and has opened the way for a parliamentary leadership on the part of the commons which was impossible so long as each of four orders was in possession of an equal voice and vote in legislative business.

**654. The Upper Chamber.**—The membership of both houses of the Riksdag is wholly elective, that of the upper indirectly, and that of

[1] Art. 9. Dodd, Modern Constitutions, II., 221.

the lower directly, by the people. The upper house consists of 150 members chosen by ballot, after the principle of proportional representation, for a term of six years by the twenty-five Landsthings, or provincial representative assemblies, and by the corporations of five of the larger towns—Stockholm, Göteborg, Malmö, Norrköping, and Gäfle. These electoral bodies are arranged in six groups, in one of which an election takes place in September of every year. The franchise arrangements under which they are themselves chosen are still determined principally with reference to property or income, but they are no longer so undemocratic as they were prior to the electoral reform of 1909, and whereas the elections were previously indirect, they are now direct. No person may be elected to the upper chamber who is not of Swedish birth, who has not attained his thirty-fifth year, and who during three years prior to his election has not owned taxable property valued at 50,000 kroner or paid taxes on an annual income of at least 3,000 kroner.[1] A member who at any time loses these qualifications forthwith forfeits his seat. Members formerly received no compensation, but under the reform measure of 1909 they, as likewise members of the lower chamber, are accorded a salary of 1,200 kroner for each session of four months, and, in the event of an extra session, 10 kroner a day, in addition to travelling expenses.

**655. The Lower Chamber.**—As constituted by law of 1894, modified by the reform act of 1909, the lower chamber consists of 230 members chosen under a system of proportional representation in fifty-six electoral districts, each of which returns from three to seven deputies. The number of members to be chosen in each of the districts is determined triennially, immediately preceding the balloting. Prior to the franchise law of 1909 the suffrage was confined, through property qualifications, within very narrow bounds. The electorate comprised native Swedes twenty-five years of age or over who were qualified as municipal voters and who possessed real property to the taxed value of 1,000 kroner, or who paid taxes on an annual income of at least 800 kroner, or who possessed a leasehold interest for at least five years of a taxable value of 6,000 kroner. In 1902 it was demonstrated by statistics that of the entire male population of the kingdom over twenty-one years of age not more than thirty-four per cent could meet these qualifications.

**656. Beginnings of the Movement for Electoral Reform.**—As early as 1895 insistent demand began to be made in many quarters for an extension of the franchise, and in the Riksdag of 1896 Premier Boström introduced a moderate measure looking toward that end and in-

[1] These amounts were substituted in 1909 for 80,000 and 4,000 respectively.

volving the introduction of proportional representation. The bill, however, was defeated. Agitation was continued, and in 1900 the Liberals made electoral reform the principal item of their programme. In 1901 there was passed a sweeping measure for the reorganization of the army whereby were increased both the term of military service and the taxes by which the military establishment was supported. Argument to the effect that such an augmentation of public burdens ought to be accompanied by an extension of public privileges was not lost upon the members of the Conservative Government, and at the opening of the Riksdag of 1902 the Speech from the Throne assigned first place in the legislative calendar to a Suffrage Extension bill. March 12 the measure was laid before the chambers. The provisions of the bill were, in brief, (1) that every male citizen, already possessed of the municipal franchise, who had completed his twenty-fifth year and was not in arrears in respect to taxes or military service, should be entitled to vote for a member of the lower national chamber; and (2) that every voter who was married, or had been married, or had completed his fortieth year, should be entitled to two votes. By reason of its plural voting features the measure was not well received, even though the plural vote was not made in any way dependent upon property. It was opposed by the Liberals and the Social Democrats, and members even of the Conservative Government which had introduced it withheld from it their support. Amidst unusual public perturbation the Liberals drew up a counter-proposal, which was introduced in the lower chamber April 16. It contemplated not simply one vote for all male citizens twenty-five years of age who possessed the municipal franchise, but also a sweeping extension of the municipal franchise itself. The upshot was the adoption by the Riksdag of a proposal to the effect that the Government, after conducting a thorough investigation of the entire subject, should submit, in 1904, a new measure based upon universal suffrage from the age of twenty-five.

**657. The Conservative Proposal of 1904.**—The issue was postponed, but agitation, especially on the part of the Social Democrats, was redoubled. February 9, 1904, the Government laid before the lower chamber a new suffrage bill embodying the recommendations of a commission appointed some months previously to conduct the investigation which had been ordered. The principal provisions of the measure were (1) that every male municipal taxpayer who had attained his twenty-fifth year, and was not deficient in respect to his fiscal or military obligations, should be entitled to one vote for a member of the Chamber; and (2) that the 230 legislative seats should be distributed among thirty-three electoral districts, and should be

filled by deputies chosen according to the principle of proportional representation. The introduction of this measure became the signal for the appearance of a multitude of projects dealing with the subject, most of which discarded proportional representation but imposed still fewer restrictions upon the franchise. In the upper house the Government's proposal, modified somewhat to meet the demands of the agrarian interests, was passed by a vote of 93 to 50; but in the lower chamber the substance of it was rejected by the narrow margin of 116 to 108.

In view of the continued support of the upper house and the meagerness of the opposition majority in the lower, the Government, at the opening of the Riksdag of 1905, submitted afresh its suffrage bill without material modification. Again there was a deluge of counter-proposals, the most important of which was that introduced March 18 by Karl Staaff, in behalf of the Liberals, to the effect that every citizen in good standing of the age of twenty-four should be entitled to one vote, and that the Chamber should consist of 165 rural and 65 urban members, chosen in single-member constituencies. May 3 and 4 the Government's bill was carried in the upper house by a vote of 93 to 50, but lost in the lower by a vote of 114 to 109. Upon Staaff's project the lower house was almost equally divided.

**658. The Proposal of the Staaff Government, 1906.**—Upon the resignation of the Lundeberg cabinet, October 28, 1905, following the Norwegian separation, a Liberal ministry was made up by Staaff, and when, January 15, 1906, the Riksdag reassembled in regular session the new Government was ready to push to a conclusion the electoral controversy. February 24 Premier Staaff introduced an elaborate measure comprising an amplification of that which had been brought forward by him a year earlier. By stipulating that at the age of twenty-four every man of good character should have one vote the scheme proposed enormously to enlarge the quota of enfranchised citizens, and by apportioning representatives among the town and country districts in the ratio of 65 to 165 it promised to reduce materially the existing over-representation of the towns. It excluded from the franchise bankrupts, persons under guardianship, and defaulters in respect to military service; it required for election at the first ballot, though not at the second, an absolute majority; it stipulated that a rearrangement of constituencies, in accordance with population, should be made every nine years by the king. It gave no place to the principle of proportional representation which had appeared in the proposals of the Conservative ministries of 1904 and 1905; and while favorable mention was made of female suffrage, the authors of the

measure avowed the opinion that the injection of that issue at the present moment would endanger the entire reform programme. Amidst renewed public demonstrations the usual flood of counter-projects, several stipulating female suffrage, made its appearance. The upper chamber, dominated by the Conservatives, held out for proportional representation, and, May 14, it negatived the Staaff proposal by a vote of 125 to 18. The day following the bill was passed in the lower chamber by a majority of 134 to 94, and a little later proportional representation was rejected by 130 votes to 98.

**659. A Compromise Bill Adopted, 1907.**—Upon the Conservative Government of Lindman which succeeded devolved the task of framing a measure upon which the two chambers could unite. A new bill made its appearance February 2, 1907. Its essential provisions were (1) that the members of the lower chamber should be elected by manhood suffrage (with the limitations specified in the Liberal programme of 1906) and proportional representation; (2) that the number of electoral districts should be fixed at fifty-six, each to return from three to seven members; (3) that members of the upper chamber should be elected by the provincial Landsthings and the municipal councils for six years instead of nine as hitherto, and by proportional representation; and (4) that the municipal suffrage, which forms the basis of the elections to the Landsthing, should be democratized in such a manner that, whereas previously a wealthy elector might cast a maximum of 100 votes in the towns and 5,000 in the rural districts,[1] henceforth the maximum of votes which might be cast by any one elector should be forty. By the Liberals and Social Democrats this measure was denounced as inadequate, although on all sides it was admitted that the changes introduced by it were so sweeping as to amount to a positive revision of the constitution. The spokesmen of the Liberal Union reintroduced the Staaff bill of 1906, and the Social Democrats brought forward a new measure which accorded a prominent place to female suffrage. February 8 the two chambers elected a joint committee to investigate and report upon the Government's project. Various amendments were added to the bill, e. g., one whereby members of the upper chamber henceforth should receive an emolument for their services, and eventually, May 14, the measure was brought to a vote. Despite the apprehensions of the Government, it was carried. In the lower house the vote was 128 to 98; in the upper, 110 to 29.

[1] Under the prevailing system, each elector in the towns had one vote for every 100 kroner income, subject to a limit of 100 votes; each one in the country had ten votes for every 100 kroner income, subject to a limit of 5,000 votes.

**660. Final Enactment, 1909: Woman's Suffrage.**—The measure comprised a series of constitutional amendments, and, in accordance with the requirements in such cases, it remained in abeyance until a newly elected Riksdag (chosen in 1908 and assembled in 1909) should have had an opportunity to take action upon it. In the Riksdag of 1908 ex-Premier Staaff introduced a measure granting female suffrage in parliamentary elections and extending it in municipal elections. But both chambers negatived this and every other proposal offered upon the subject, preferring to support the Government in its purpose to keep the issue of woman's suffrage in the background until the reforms of 1907 should have been carried to completion. Early in the session of 1909 the "preliminary resolution" of 1907 was given the final approval of the chambers. The Liberals, being now interested principally in the woman's suffrage propaganda, did not combat the measure, so that the majorities for its adoption were overwhelming.

The enactment of this piece of legislation constitutes a landmark in Swedish political history. Through upwards of a decade the question of franchise reform had overshadowed all other public issues and had distracted attention from various pressing problems of state. Denounced still by the extremists of both radical and conservative groups, the new law was hailed by the mass of the nation with the most evident satisfaction.[1] The question of woman's suffrage remains. At the elections of 1908 the Liberal party emulated the Social Democrats in the incorporation of this project in its programme, and, April 21, 1909, the Constitutional Committee of the Riksdag recommended the adoption of a measure whereby women should be accorded the parliamentary suffrage and eligibility to sit as members of either chamber. In May, 1911, the essentials of this recommendation were accepted by the lower chamber by a vote of 120 to 92, but by the upper they were rejected overwhelmingly. At the opening of the Riksdag of 1912 the Speech from the Throne announced the purpose of the Government to introduce a measure for the enfranchisement of women, and

[1] In the main, the scheme of proportional representation adopted in Sweden is similar to that in operation in Belgium (see pp. 542–545). Electors are expected to write at the head of their ballot papers the name or motto of their party. The papers bearing the same name or emblem are then grouped together, the numbers in each group are ascertained, and the seats available are allotted to these groups in accordance with the d'Hondt rule, irrespective of the number of votes obtained by individual candidates. The candidate receiving the largest number of votes is declared elected. The papers on which his name appears are then marked down to the value of one-half, the relative position of the remaining candidates is ascertained afresh, and the highest of these is declared elected, and so on. Unlike the Belgian system, the Swedish plan provides for the allotment of but a single seat at a time. Humphreys, Proportional Representation, 296–313.

during the session the promise was redeemed by the bringing forward of a bill in accordance with whose terms every Swede, without distinction of sex, over twenty-four years of age and free from legal disabilities, may vote for members of the lower chamber.

## III. The Riksdag in Operation—Political Parties

**661. Organization and Procedure.**—By the Riksdag law of 1866 the king is required to summon the chambers annually and empowered to convene extraordinary sessions as occasion may demand. It is within the competence of the king in council to dissolve either or both of the chambers, but in such an event a general election must be ordered forthwith, and the new Riksdag is required to be assembled within three months after the dissolution.[1] The president and vice-presidents of both houses are named by the crown; otherwise the chambers are permitted to choose their officials and to manage their affairs independently. It is specifically forbidden that either house, or any committee, shall deliberate upon or decide any question in the presence of the sovereign. The powers of the Riksdag cover the full range of civil and criminal legislation; but no measure may become law without the assent of the crown. In other words, the veto which the king possesses is absolute. At the same time, the king is forbidden, save with the consent of the Riksdag, to impose any tax, to contract any loan, to dispose of crown property, to alienate any portion of the kingdom, to change the arms or flag of the realm, to modify the standard or weight of the coinage, or to introduce any alteration in the national constitution. Measures may be proposed, not only by the Government, but by members of either house. The relations between the two houses are peculiarly close. At each regular session there are constituted certain joint committees whose function is the preparation and preliminary consideration of business for the attention of both chambers. Most important among these committees is that on laws, which, in the language of the constitution, "elaborates projects submitted to it by the houses for the improvement of the civil, criminal, municipal, and ecclesiastical laws."[2] Other such committees are those on the constitution, on finance, on appropriations, and on the national bank.

**662. Powers.**—The stipulations of the constitution which relate to finance are precise. "The ancient right of the Swedish people to tax themselves," it is affirmed, "shall be exercised by the Riksdag alone."[3]

[1] Art. 109. Dodd, Modern Constitutions, II., 249.
[2] Art. 53. Ibid., II., 234.
[3] Art. 57. Ibid., 234.

The king is required at each regular session to lay before the Riksdag a statement of the financial condition of the country in all of its aspects, both income and expenses, assets and debts. It is made the duty of the Riksdag to vote such supplies as the treasury manifestly needs and to prescribe specifically the objects for which the separate items of appropriation may be employed; also to vote two separate amounts of adequate size to be used by the king in emergency only, in the one instance in the event of war, in the other, when "absolutely necessary for the defense of the country, or for other important and urgent purposes."

Finally, the Riksdag is authorized and required to exercise a supervisory vigilance in relation to the several branches of the governmental system. One of the functions of the Constitutional Committee is that of inspecting the records of the Council of State to determine whether there has been any violation of the constitution or of the general laws; and in the event of positive findings the Committee may institute proceedings before the Riksrâtt, or Court of Impeachment. At every regular session the Riksdag is required to appoint a solicitor-general, ranking equally with the attorney-general of the crown, with authority to attend the sessions of any of the courts of the kingdom, to examine all judicial records, to present to the Riksdag a full report upon the administration of justice throughout the nation, and, if necessary, to bring charges of impeachment against judicial officers. Every third year the Riksdag appoints a special commission to determine whether all of the members of the Supreme Court "deserve to be retained in their important offices." Every third year, too, a commission of six is constituted which, under the presidency of the solicitor-general, overhauls the arrangements respecting the liberty of the press.[1]

**663. Political Parties: Military and Tariff Questions.**—In Sweden, as in European countries generally, the party alignment which lies at the root of contemporary politics is that of Conservatives and Liberals. Much of the time, however, within the past half-century party demarcations have been vague and shifting, being determined largely in successive periods by the rise and disappearance of various preponderating public issues. The first great question upon which party affiliations were shaped after the accession of Oscar II. in 1872 was that of national defense. The army and navy were recognized at that time to be hopelessly antiquated, and the successive Conservative ministries of the seventies were resolved upon greatly increased expenditures in the interest of military and naval rehabilitation. Against this programme was set squarely that of rigid economy,

[1] Arts. 96–100. Dodd, Modern Constitutions, II., 244–245.

urged by the strongly organized Landtmannapartiet, or Agricultural party, representing the interests of the landed proprietors, large and small, of the kingdom. The Landtmannapartiet was founded in 1867, immediately following the reconstitution of the Riksdag under the law of 1866, and through several decades it comprised the dominating element in the lower chamber, in addition to possessing at times no inconsiderable amount of influence in the upper one. Throughout the period covered by the Conservative ministry of Baron de Geer (1875–1880) and the Agricultural party's government under Arvid Posse (1880–1883) there was an all but unbroken deadlock between the upper chamber, dominated by the partisans of military expenditure, and the lower, dominated equally by the advocates of tax-reduction. It was not until 1885 that a ministry under Themptander succeeded in procuring the enactment of a compromise measure increasing the obligation of military service but remitting thirty per cent of the land taxes. By this legislation the military and tax issues were put in the way of eventual adjustment.

Already there had arisen a new issue, upon which party lines were chiefly to be drawn during the later eighties and earlier nineties. This was the question of the tariff. The continued distress of the agrarian interests after 1880, arising in part from the competition of foreign foodstuffs, suggested to the landed interests of Sweden that the nation would do well to follow in the path already entered upon by Germany. The consequence was the rise of a powerful protectionist party, opposed by a free trade party with which were identified especially the merchant classes. In 1886 the agrarians procured a majority in the lower chamber, and by 1888 they were in control of both branches. The free trade Themptander ministry was thereupon replaced by the protectionist ministry of Bildt, under which, in 1888, there were introduced protective duties on cereals, and later, in 1891–1892, on manufactured commodities. Step by step, the customs policy developed by Sweden during the middle of the century was reversed completely.

**664. Politics Since 1891.**—July 10, 1891, the Conservative Erik Gustaf Boström, became premier, and thereafter, save for a brief interval covered by the von Otter ministry (September, 1900, to July, 1902) this able representative of the dominant agrarian interests continued uninterruptedly at the helm until the Norwegian crisis in the spring of 1905. With the elimination, however, of the tariff issue from the field of active politics, Premier Boström adopted an attitude on public questions which, on the whole, was essentially independent. In the later nineties there arose two problems, neither entirely new, which were destined long to occupy the attention of the Government

almost to the exclusion of all things else. One of these was the readjustment with Norway. The other was the question of electoral reform. The one affected considerably the fate of ministries, but did not alter appreciably the alignment of parties; the other became the issue upon which party activity largely turned through a number of years. All parties from the outset professed to favor electoral reform, but upon the nature and extent of such reform there was the widest difference of sentiment and policy. During the course of the contest upon this issue the Liberal party tended to become distinctly more radical than it had been in the nineties; and it is worthy of note that the rise of the Social Democrats to parliamentary importance falls almost entirely within the period covered by the electoral controversy. The first Social Democratic member of the Riksdag was elected in 1896. From 1906 to 1911 the Conservative ministry of Lindman, supported largely by the landholding elements of both chambers, maintained steadily its position. At the elections of 1908 the Liberals realized some gains, and at those of 1911 both they and the Social Democrats cut deeply into the Conservative majority. When, in September, 1911, it appeared that the Liberals had procured 102 seats in the lower chamber, the Social Democrats 64, and the Conservatives but 64, the Lindman government promptly resigned and a new ministry was made up by the Liberal leader and ex-premier Staaff. The invitation which was extended the Social Democrats to participate in the forming of the ministry was declined. In October the upper chamber was dissolved, for the first time in Swedish history, and at the elections which were concluded November 30 the Liberals and Social Democrats realized another distinct advance. Before the elections the chamber contained 116 Conservatives, 30 Liberals, and 4 Social Democrats; following them the quotas were, respectively, 87, 51, and 12.[1]

## IV. The Judiciary and Local Government

**665. The Courts.**—In theory the judicial power in Sweden, being lodged ultimately in the crown, is indistinguishable from the executive; in practice, however, it is essentially independent. The constitution regulates with some minuteness the character of the principal tribunal, the *Högsta Domstolen*, or Supreme Court, but leaves the organization of the inferior courts to be determined by the king and the Riksdag. The Supreme Court consists of eighteen "councillors of justice" appointed by the crown from among men of experience,

[1] V. Pinot, Le parlementarisme suédois, in *Revue Politique et Parlementaire*, Sept. 10, 1912.

honesty, and known legal learning. The functions of the court are largely appellate, but it is worthy of note that in the event that a request is made of the king by the lower courts, or by officials, respecting the proper interpretation of a law, the Supreme Court is authorized to furnish such interpretation, provided the subject is a proper one for the consideration of the courts. Cases of lesser importance may be heard and decided in the Supreme Court by five, or even four, members, when all are in agreement. In more important cases at least seven judges must participate. When the king desires he may be present, and when present he possesses two votes in all cases heard and decided. When the question is one of legal interpretation he is entitled to two votes, whether or not he actually attends the proceedings. All decisions are rendered in the name of the king. The inferior tribunals comprise 212 district courts, or courts of first instance, and three higher courts of appeal (*hofrätter*), situated at Stockholm, Jönköping, and Kristianstad. In the 91 urban districts the court consists of the burgomaster and at least two aldermen; in the 121 rural districts, of a judge and twelve elected and unpaid peasant proprietors serving as jurymen. No person occupying judicial office may be removed save after trial and judgment.

**666. Local Government.**—The kingdom is divided into twenty-five administrative provinces or counties (*län*).[1] The principal executive official in each is a *landshöfding*, or prefect, who is appointed by the crown and assisted by a varying number of bailiffs and sub-officials. Each province has a Landsthing, or assembly, which meets for a few days annually, in September, under the presidency of a member designated by the crown. All members are elected directly by the voters of the towns and rural districts, in accordance with the principle of proportional representation, and under a body of franchise regulations which, while much liberalized in 1909, still is based essentially upon property-holding. The function of the Landsthing is the enactment of provincial legislation and the general supervision of provincial affairs. In a few of the larger towns—Stockholm, Göteborg, Malmö, Norrköping, and Gåfle—these functions are vested in a separate municipal council. The conditions under which purely local affairs are administered are regulated by the communal laws of March 21, 1862. Each rural parish and each town comprises a self-governing commune. Each has an assembly, composed of all taxpayers, which passes ordinances, elects minor officials, and decides petty questions of purely communal concern.

[1] One of these comprises simply the city of Stockholm.

# PART IX.—THE IBERIAN STATES

## CHAPTER XXXIII

### THE GOVERNMENT OF SPAIN

#### I. The Beginnings of Constitutionalism

**667. The Napoleonic Régime and the National Resistance.**—It was the fortune of the kingdom of Spain, as it was that of the several Italian states, to be made tributary to the dominion of Napoleon; and in Spain, as in Italy, the first phase of the growth of constitutional government fell within the period covered by the Corsican's ascendancy. Starting with the purpose of punishing Portugal for her refusal to break with Great Britain, Napoleon, during the years 1807–1808, worked out gradually an Iberian policy which comprehended not only the subversion of the independent Portuguese monarchy but also the reduction of Spain to the status of a subject kingdom. In pursuance of this programme French troops began, in February, 1808, the occupation of Spanish strongholds, including the capital. The aged Bourbon king, Charles IV., was induced to renounce his throne and the crown prince Ferdinand his claim to the succession, and, June 6, Joseph Bonaparte, since 1806 king of Naples, was designated sovereign. An assembly of ninety-one pliant Spanish notables, convened at Bayonne in the guise of a junta, was influenced both to "petition" the Emperor for Joseph's appointment and to ratify the *projet* of a Napoleonic constitution.

Napoleon's seizure of the crown of Spain was an act of sheer violence, and from the outset Joseph was considered by his subjects a simple usurper. The establishment of the new régime at Madrid became the signal for a national uprising which not only compelled the Emperor seriously to modify his immediate plans and to lead in person a campaign of conquest, but contributed in the end to the collapse of the entire Napoleonic fabric. Upon the restoration of some degree of order there followed the introduction of a number of reforms—the sweeping away of the last vestiges of feudalism, the abolition of the tribunal of the Inquisition, the reduction of the number of monasteries and con-

vents by a third, and the repeal of all internal customs. But the position occupied by the alien sovereign was never other than precarious. At no time did he secure control over the whole of the country, and during the successive stages of the Peninsular War of 1807–1814 his mastery of the situation diminished gradually to the vanishing point. At the outset the principal directing agencies of the opposition were the irregularly organized local juntas which sprang up in the various provinces, but before the end of 1808 there was constituted a central junta of thirty-four members, and in September, 1810, there was convened at Cadiz a general Cortes—not three estates, as tradition demanded, but a single assembly of indirectly elected deputies of the people.

**668. The Constitution of 1812.**—Professing allegiance to the captive Ferdinand, the Cortes of 1810 addressed itself first of all to the prosecution of the war and the maintenance of the national independence, but after a year it proceeded to draw up a constitution for a liberalized Bourbon monarchy. Save the fundamental decree upon which rested nominally the government of Joseph Bonaparte, this constitution, promulgated March 19, 1812, was the first such instrument in Spanish history. It was, of course, the first to emanate from Spanish sources. Permeating it throughout were the radical principles of the French constitution of 1791. It asserted unreservedly the sovereignty of the people and proclaimed as inviolable the principle of equality before the law. Executive authority it intrusted to the king, but the monarch was left so scant a measure of independence that not only might he never prorogue or dissolve the Cortes, but not even might he marry or set foot outside the kingdom without express permission. For the actual exercise of the executive functions there were created seven departments, or ministries, each presided over by a responsible official. The fundamental powers of state were conferred upon a Cortes of one chamber, whose members were to be elected for a term of two years by indirect manhood suffrage. Various features of the French constitution which experience had shown to be ill-advised were reproduced blindly enough, among them the ineligibility of members of the legislative body for re-election and the disqualification of ministers to sit as members. The government of the towns was intrusted to the inhabitants; that of the provinces, to a governor appointed by the central authorities and an assembly of deputies popularly chosen for a term of four years. As the starting point of Spanish constitutional development the fundamental law of 1812 is of genuine interest. It is not to be imagined, however, that the instrument reflects with any degree of accuracy the political sentiment and ideals of the mass

of the Spanish people. On the contrary, it was the work of a slender democratic minority, and it was never even submitted to the nation for ratification. It was a product of revolution, and at no time was there opportunity for its framers to put it completely into operation.[1]

**669. The Restoration and the Reign of Ferdinand VII.**—Upon the fall of Napoleon the legitimate sovereign, under the name of Ferdinand VII., was established forthwith upon the Spanish throne. At one time he had professed a purpose to perpetuate the new constitution, but even before his return to Madrid he pronounced both the constitution and the various decrees of the Cortes "null and of no effect," and when the Cortes undertook to press its claims to recognition it found itself powerless. In the restoration of absolutism the king was supported not only by the army, the nobility, and the Church, but also by the mass of the people. For constitutional government there was plainly little demand, and if Ferdinand had been possessed of even the most ordinary qualities of character and statesmanship, he might probably have ruled successfully in a perfectly despotic manner throughout the remainder of his life. As it was, the reaction was accompanied by such glaring excesses that the spirit of revolution was kept alive, and scarcely a twelvemonth passed in the course of which there were not menacing uprisings. In January, 1820, a revolt of unusual seriousness began in a mutiny at Cadiz on the part of the soldiers who were being gathered for service in America. The revolt spread and, to save himself, the king revived the constitution of 1812 and pledged himself to a scrupulous observance of its stipulations. The movement, however, was doomed to prompt and seemingly complete failure. The liberals were disunited, and the two years during which the king was virtually a prisoner in their hands comprised a period of sheer anarchy. The powers of the Holy Alliance, moreover, in congress at Verona (1822), adopted a programme of intervention, in execution of which, in April, 1823, the French government sent an army across the Pyrenees under the command of the Duke of Angoulême. A six months' campaign, culminating in the capture of Cadiz, whither the Cortes had carried the king, served effectively to crush the revolution and to reinstate the sovereign completely in the

[1] For brief accounts of the Napoleonic régime in Spain see Cambridge Modern History, IX., Chap. 11 (bibliography, pp. 851–853); Lavisse et Rambaud, Histoire Générale, IX., Chap. 6; A. Fournier, Life of Napoleon the First, 2 vols., (new ed. New York, 1911), II., Chaps. 14–15; J. H. Rose, Life of Napoleon I. (London, 1902), Chap. 28; M. A. S. Hume, Modern Spain, 1788–1898 (London, 1899), Chaps. 2–4; and H. B. Clarke, Modern Spain, 1815–1898 (Cambridge, 1906), Chap. 1. Of the numerous histories of the Peninsular War the most celebrated is W. Napier, History of the War in the Peninsula and the South of France, 1807–1814, 10 vols. (London, 1828).

position which he had occupied prior to 1820. Then followed a fresh period of repression, in the course of which the constitution of 1812 was again set aside, and throughout the remaining decade of the reign the government of the kingdom was both despotic and utterly unprogressive.[1]

## II. Political and Constitutional Development, 1833–1876

**670. Maria Christina and the Estatuto Real of 1834.**—Ferdinand VII. died September 29, 1833, leaving no son. Regularly since the establishment of the Bourbon dynasty the succession in Spain had been governed by the principle of the Salic Law, imported originally from France. But, to the end that the inheritance might fall to a daughter rather than to his brother, Don Carlos, Ferdinand had promulgated, in 1830, a Pragmatic Sanction whereby the Salic principle was set aside. Don Carlos and his supporters refused absolutely to admit the validity of this act, but Ferdinand was succeeded by his three-year-old daughter, Isabella, and the government was placed in the hands of the queen-mother, Maria Christina of Naples, as regent.[2] Her administration of affairs lasted until 1840. From the constitutional point of view the period was important solely because, under stress of circumstances, the regent was driven to adopt a distinctly liberal policy, and, in time, to promulgate a new constitutional instrument. Don Carlos, supported by the nobility, the clergy, and other reactionary elements, kept up a guerilla war by which the tenure of the " Christinos " was endangered continuously. The regent was herself a thoroughgoing absolutist, but her sole hope lay in the

[1] On the period covered by Ferdinand's reign see Cambridge Modern History, X., Chap. 7 (bibliography, pp. 808–811); Lavisse et Rambaud, Histoire Générale, X., Chap. 6; Clarke, Modern Spain, Chaps. 2–4, and Hume, Modern Spain, 1788–1898, Chaps. 5–6. Extended works which touch upon the constitutional aspects of the period include: H. Gmelin, Studien zur Spanischen Verfassungsgeschichte des neunzehnten Jahrhunderts (Stuttgart, 1905); G. Diercks, Geschichte Spaniens (Berlin, 1895); A. Borrego, Historia de las Cortes de España durante el siglo XIX. (Madrid, 1885); and M. Calvo y Martin, Regimem parlamentario de España en el siglo XIX. (Madrid, 1883). A valuable essay is P. Bancada, El sentido social de la revolucion de 1820, in *Revista Contemporánea* (August, 1903).

[2] In the mediæval states of Spain there was no discrimination against female succession. The Spanish Salic Law was enacted by a decree of Philip V. in 1713, at the close of the War of the Spanish Succession. Its original object was to prevent the union of the crowns of France and Spain. In view of the change which had come in the international situation, Charles IV., supported by the Cortes, in 1789 abrogated the act of 1713 and re-established the law of *Siete Partidas* which permitted the succession of women. This measure was recorded in the archives, but was not published at the time; so that what Ferdinand VII. did was simply to publish, May 19, 1830, at the instigation of the Queen, this *pragmatica*, or law, of 1789. The birth of Isabella occurred the following October 10.

support of the liberals, and to retain that it was necessary for her to make large concessions. The upshot was that in April, 1834, she issued a royal statute (*Estatuto Real*), whereby there was established a new type of Cortes, comprising two chambers instead of one. The upper house, or Estamento de Proceres, was essentially a senate; the lower, or Estamento de Procuradores, was a chamber of deputies. Members of the Procuradores were to be elected by taxpayers for a term of three years. Upon the Cortes was conferred power of taxation and of legislation; but the Government alone might propose laws, and the Cortes, like its ancient predecessor, was allowed no initiative save that of petitioning the Government to submit measures upon particular subjects. A minimum of one legislative session annually was stipulated; but the sovereign was left free otherwise to convoke and to dissolve the chambers at will. Ministers were recognized to be responsible solely to the crown.

**671. The Constitution of 1837.**— Toward the establishment of constitutional government the Statute of 1834 marked some, albeit small, advance. The Moderados, or moderate liberals, were disposed to accept it as the largest concession that, for the present, could be expected. But the Progressistas, or progressives, insisted upon a revival of the more democratic constitution of 1812, and in 1836 the regent was compelled by a widespread military revolt to sign a decree pledging the Government to this policy. A constituent Cortes was convoked and the outcome was the promulgation of the constitution of June 17, 1837, based upon the instrument of 1812, but in respect to liberalism standing midway between that instrument and the Statute of 1834. Like the constitution of 1812, that of 1837 affirmed the sovereignty of the nation and the responsibility of ministers to the legislative body. On the other hand, the Cortes was to consist, as under the Statute, of two houses, a Senate and a Congress. The members of the one were to be appointed for life by the crown; those of the other were to be elected by the people for three years. In a number of respects the instrument of 1837 resembled the recently adopted constitution of Belgium, even as the Statute of 1834 had resembled the French Charter of 1814. In the words of a Spanish historian, the document of 1837 had the two-fold importance of "assuring the constitutional principle, which thenceforth was never denied, and of ending the sentiment of idolatry for the constitution of 1812."[1]

**672. The Constitution of 1845.**— October 12, 1840, the regent Maria Christina was forced by the intensity of civil discord to abdicate and to withdraw to France. Her successor was General Espartero, leader of the Progressistas and the first of a long line of military men to

[1] R. Altamira, in Cambridge Modern History, X., 238.

whom it has fallen at various times to direct the governmental affairs of the Spanish nation. November 8, 1843, the princess Isabella although yet but thirteen years old, was declared of age and, under the name of Isabella II., was proclaimed sovereign. Her reign, covering the ensuing twenty years, comprised distinctly an era of stagnation and veiled absolutism. Nominally the constitution of 1837 continued in operation until 1845. At that time it was replaced by a revised and less liberal instrument, drawn up by the Moderados with the assistance of an ordinary Cortes. The duration of the Cortes was extended from three to four years, severer restrictions upon the press were established, supervision of the local authorities was still further centralized, and the requirement that the sovereign might not marry without the consent of the Cortez was rescinded. In the course of a revolutionary movement in 1854 there was convoked a constituent Cortes, dominated by Moderates and Progressives. The constitution which this body framed, comprising essentially a revival of the instrument of 1837, was never, however, put in operation. In the end, by a royal decree of 1856, the constitution of 1845 was amended and re-established. Save for some illiberal amendments of 1857,[1] which were repealed in 1864, this instrument of 1845 continued in operation until 1868. Throughout the period, however, constitutionalism was hardly more than a fiction.[2]

**673. The Constitution of 1869: King Amadeo.**—By a revolt which began in September, 1868, the queen was compelled to flee from the country, and, eventually, June 25, 1869, to abdicate. A provisional government effected arrangements for the election of a Cortes by manhood suffrage, and this Cortes, convened at the capital, February 11, 1869, addressed itself first of all to the task of drafting a new national constitution. A considerable number of members advocated the establishment of a republic; but for so radical an innovation there was clearly no general demand, and in the end the proposition was rejected by a vote of 214 to 71. June 1 a constitution was adopted which, however, marked a large advance in the direction of liberalism. It contained substantial guarantees of freedom of speech, freedom of the press, liberty of religion, and the right of petition and of public assembly, and in unequivocal terms the sovereignty of the people was

[1] One established conditions under which senatorial seats might be made hereditary.

[2] Cambridge Modern History, X., Chap. 7; XI., Chap. 20; Lavisse et Rambaud, Histoire Générale, X., Chap. 6; XI., Chap. 9; Hume, Modern Spain, Chaps. 7–12; Clarke, Modern Spain, Chaps. 5–11; Mariano, La Regencia de D. Baldomero Espartero (Madrid, 1870); J. Perez de Guzman, Las Cortes y los Gobiernos del reinado de Da Isabel II., in *La España Moderna*, 1903.

affirmed afresh. A Cortes of two houses was provided for, the members of the Senate to be chosen indirectly by the people through electoral colleges and the provincial assemblies, those of the Congress to be elected by manhood suffrage, the only qualification for voting being the attainment of the age of twenty-five years and possession of ordinary civil rights.

Pending the selection of a sovereign, a regency was established under Marshal Serrano. Among the several dignitaries who were considered —Alfonso (son of the deposed Isabella) the Duke of Montpensier, Ferdinand of Savoy (brother of King Victor Emmanuel of Italy), King Luiz of Portugal, Ferdinand of Saxony, Leopold of Hohenzollern-Sigmaringen, and Prince Amadeo, duke of Aosta, second son of Victor Emmanuel—favor settled eventually upon the last named, who was elected November 19, 1870, by a vote of 191 to 120. At the end of 1870 the new sovereign arrived in Spain, and February 2, 1871, he took oath to uphold the recently established constitution. From the outset, however, his position was one of extreme difficulty. He was opposed by those who desired a republic, by the Carlists, by the adherents of the former crown prince Alfonso, and by the clergy; and as a foreigner he was regarded with indifference, if not antipathy, by patriotic Spaniards generally. February 10, 1873, wearied by the turbulence in which he was engulfed, he resigned his powers into the hands of the Cortes, and by that body his abdication was forthwith accepted. It is a sufficient commentary upon the political character of the reign to observe that within the twenty-four months which it covered there were no fewer than six ministerial crises and three general elections.

**674. The Republic (1873–1875): Monarchy Restored.**—The breakdown of the elective monarchy, following thus closely the overthrow of absolutism, cleared the way for the triumph of the republicans. The monarchist parties, confronted suddenly by an unanticipated situation, were able to agree upon no plan of action, and the upshot was that, by a vote of 258 to 32, the Cortes declared for a republic and decreed that the drafting of a republican constitution should be undertaken by a specially elected convention. Although it was true, as Castelar asserted, that the monarchy had perished from natural causes, that the republic was the inevitable product of existing circumstance, and that the transition from the one to the other was effected without bloodshed, it was apparent from the outset that republicanism had not, after all, struck root deeply. A constitution was drawn up, but it was at no time really put into operation. The supporters of the new régime were far from agreed as to the kind of

republic, federal or centralized, that should be established;[1] the republican leaders were mutually jealous and prone to profitless theorizing; the nation was lacking in the experience which is a prerequisite of self-government.[2] At home the republic was opposed by the monarchists of the various groups, by the clergy, and by the extreme particularists, and abroad it won the recognition of not one nation save the United States. The presidency of Figueras lasted four months; that of Pi y Margall, six weeks; that of Salmeron, a similar period; that of Castelar, about four months (September 7, 1873, to January 3, 1874). Castelar, however, was rather a dictator than a president, and so was his Conservative successor Serrano. By the beginning of 1874 it was admitted universally that the only escape from the anomalous situation in which the nation found itself lay in a restoration of the legitimist monarchy, in the person of Don Alfonso, son of Isabella II. The collapse of the republic was as swift and as noiseless as had been its establishment. The principal agency in it was the army, which, in December, 1874, declared definitely for Alfonso, after he had pledged himself to a grant of amnesty and the maintenance of constitutional government. December 31 a regency ministry under the presidency of Cânovas was announced, and the new reign began with the landing of the young sovereign at Barcelona, January 10, 1875. Between the premature and ineffective republicanism of the past year, on the one hand, and the absolutism of a Carlist government, on the other, the constitutional monarchy of Alfonso XII. seemed a logical, and to the mass of the Spanish people, an eminently satisfactory, compromise.[3]

[1] Castelar favored a consolidated and radical republic; Serrano, a consolidated and conservative republic; Pi y Margall, a federal republic, on the pattern of the United States; Pavia, a republic which should be predominantly military.

[2] In this connection may be mentioned a remark of General Prim, one of the leading spirits in the provisional government of 1868. When asked why at that time he did not establish a republic his reply was: "It would have been a republic without republicans." There was no less a dearth of real republicans in 1873–1874.

[3] On the revolutionary and republican periods see Cambridge Modern History XI., Chap. 20 (bibliography, pp. 945–949); Lavisse et Rambaud, Histoire Générale, XII., Chap. 9; Hume, Modern Spain, Chap. 10; V. Cherbuliez, L'Espagne politique, 1868–1873 (Paris, 1874); W. Lauser, Geschichte Spaniens von dem Sturz Isabellas, 1868–1875 (Leipzig, 1877); E. H. Strobel, The Spanish Revolution, 1868–1875 (London, 1898); E. Rodriguez Solis, Historia del partido republicano español (Madrid, 1893); Pi y Margall, Amadeo de Saboya (Madrid, 1884); H. R. Whitehouse, Amadeus, King of Spain (New York, 1897). A significant work is E. Castelar, Historia del movimiento republicano en Europa (Madrid, 1873–1874). Special works dealing with the restoration include A. Houghton, Les origines de la restauration des Bourbons en Espagne (Paris, 1890); Diez de Tejada, Historia de la restauracion (Madrid, 1879).

## III. The Present Constitution

**675. The Constitution Adopted.**—The year following the re-establishment of the monarchy was consumed largely in the suppression of the Carlists and the reorganization of the government. During this period Cánovas, at the head of a strong Conservative and Clerical ministry, ruled virtually as a dictator, and sooner or later most vestiges of the republic were swept away, while the nation was won over solidly to the new order. At the election of the first Cortes of the Restoration, January 22, 1876, the principle of manhood suffrage was continued in operation, though so docile did the electorate prove that Cânovas was able to secure, in both chambers, a heavy majority which was ready to vote at the Government's behest a franchise system of a much less liberal type. The first important task of this Cortes was the consideration and adoption of a new national constitution. As to the sort of constitution most desirable there was, as ever, wide difference of opinion. The Conservatives favored a revival of the instrument of 1845. The Liberals much preferred a restoration of that of 1869. A commission of thirty-nine, designated May 20, 1875, by a junta convened by Cânovas, had evolved with some difficulty an instrument which combined various features of both of these earlier documents, and by the Cortes of 1876 this proposed constitution was at length accorded definite, though by no means unanimous, assent (June 30). This instrument was put forthwith into operation, and it has remained to this day, substantially without alteration, the fundamental law of Spain. Based essentially upon the constitution of 1845, it none the less exhibits at many points the influence of the liberal principles which underlay the instrument of 1869.

**676. Contents: Guarantees of Individual Liberty.**—In scope the constitution is comprehensive. Its text falls into thirteen "titles" and eighty-nine articles. Like the constitution of Italy, it contains no provision for its own amendment; but in Spain, as also in Italy, the distinction between constituent and legislative powers is not sharply drawn and a simple act of the legislative body is in practice adequate to modify the working constitution of the kingdom. Among the thirteen titles one of the most elaborate is that in which are defined the rights and privileges of Spanish subjects and of aliens resident in Spain.[1] Among rights specifically guaranteed are those of freedom of speech, freedom of the press, peaceful assemblage, the formation of associations, petition, unrestrained choice of professions, and eligibil-

[1] No. 1. Dodd, Modern Constitutions, II., 199–203.

ity to public offices and employments, "according to merit and capacity." Immunities guaranteed include exemption from arrest, "except in the cases and in the manner prescribed by law"; exemption from imprisonment, except upon order of a competent judicial official; freedom from molestation on account of religious opinions, provided due respect for "Christian morality" be shown; [1] and exemption from search of papers and effects and from confiscation of property, save by authority legally competent. It is forbidden that either the military or the civil authorities shall impose any penalty other than such as shall have been established previously by law. Certain guarantees, i. e., those respecting arrest, imprisonment, search, freedom of domicile, freedom of speech and press, assemblage, and associations, may, under provision of the constitution, be suspended throughout the kingdom or in any portion thereof, but only when demanded by the security of the state, and then only temporarily and by means of a specific law. In no case may any other guarantee which is named in the constitution be withdrawn, even temporarily. When the Cortes is not in session the Government may suspend, through the medium of a royal decree, any one of the guarantees which the Cortes itself is authorized to suspend, but at the earliest opportunity such a decree must be submitted to the Cortes for ratification. It need hardly be pointed out that the opportunity for the evasion of constitutionalism which is created by this power of suspension is enormous, and anyone at all familiar with the history of public affairs in Spain would be able to cite numerous occasions upon which, upon pretexts more or less plausible, the guarantees of the fundamental law have been set at naught.[2]

[1] By Article 11 Roman Catholicism is declared to be the religion of the state. "The nation," it is stipulated further, "binds itself to maintain this religion and its ministers." Dodd, Modern Constitutions, II., 201.

[2] An official text of the constitution of 1876 is published by the Spanish Government under the title Constitución politica de la monarchia Española y leyes complementarias (4th ed., Madrid, 1901). The texts of all of the Spanish constitutions of the nineteenth century are printed in the first volume of Muro y Martinez, Constituciones de España y de las demas naciones de Europa, con la historia general de España (Madrid, 1881); also in the first volume—Constituciones y reglamentos (Madrid, 1906)—of a collection projected by the Spanish Government under the title of Publicaciones Parlamentarias. English versions of the instrument of 1876 appear in British and Foreign State Papers, LXVII. (1875–1876), 118 ff., and Dodd, Modern Constitutions, II., 199–216. An excellent brief treatise on Spanish constitutional development is H. Gmelin, Studien zur spanischen Verfassungsgeschichte des neunzehnten Jahrhunderts (Stuttgart, 1905); on Spanish constitutional law, M. Torres Campos, Das Staatsrecht des Königreichs Spanien (Freiburg, 1889), in Marquardsen's Handbuch; on Spanish administrative law, V. Santamaria de Paredes, Curso de derecho administrativo (5th ed., Madrid, 1898); and on the

## IV. The Crown and the Ministry

**677. The Rules of Succession.**—Executive power in the kingdom is vested solely in the crown, although in practice it devolves to a large degree upon the council of ministers. Kingship is hereditary, and in regulation of the succession the constitution lays down the general principle that an elder line shall always be preferred to younger ones; in the same line, the nearer degree of kinship to the more remote; in the same degree of kinship, the male to the female; in the same sex, the older to the younger person. By the original constitution Alfonso XII. was declared to be the legitimate sovereign, and provision was made that if the line of legitimate descendants of Alfonso should be extinguished, his sisters should succeed in the established order; then his aunt (the sister of his mother Isabella II.) and her legitimate descendants; and, finally, the descendants of his uncles, the brothers of Ferdinand VII.[1] It will be recalled that the Pragmatic Sanction of 1830 abolished in Spain the Salic principle and restored the ancient right of females to inherit. Spain is, indeed, one of the few European states in which this right exists. At the same time, as has been pointed out, when the degree of kinship is identical, preference is accorded the male. Thus it came about that the present sovereign, Alfonso XIII., the posthumous son of Alfonso XII., took precedence over his two sisters, both of whom were older than he, and the elder of whom, Maria de las Mercedes, actually was queen from the death of her father, November 25, 1885, until the birth of her brother, May 17, 1886.[2]

**678. Regencies.**—Any member of the royal family who may be incapable of governing, or who by his conduct may have forfeited his claim to the good-will of the nation, may be excluded from the succes-

comparative aspects of Spanish institutions, R. de Oloriz, La Constitución española comparada con las de Inglaterra, Estados-Unidos, Francia y Alemania (Valencia, 1904). More extended works of importance include V. Santamaria de Paredes, Curso de derecho politico (6th ed., Madrid, 1898), and A. Posada, Tratado de derecho administrativo (Madrid, 1897–1898). A monumental collection of laws relating to Spanish administrative affairs is M. Martinez Alcubilla, Diccionario de la administración Española, Peninsular y Ultramarina (5th ed., 1892–1894), to which is added annually an appendix containing texts of the most recent laws and decrees. Special treatises of importance are M. M. Calvo, Regimen parlamentario en España (Madrid, 1883); J. Costa, Oligarquia y Caciquismo como la forma actual del Gobierno en España (Madrid, 1903); and Y. Guytot, L'évolution politique et sociale de l'Espagne (Paris, 1899). Mention may be made of R. Fraoso, Las constituciones de España, in *Revista de España*, June–July, 1880.

[1] Arts. 59–61. Dodd, Modern Constitutions, II., 211.

[2] She was, however, but a child five years of age.

sion by law. Disputes concerning rights or facts involved in the succession are to be adjusted by law, and in event that all of the family lines mentioned in the constitution should be extinguished it would become the duty of the Cortes to make such disposal of the crown as might be adjudged "most suitable to the nation."[1] Both the sovereign and the heir presumptive are forbidden to marry any person who by law is excluded from the succession. They are, indeed, forbidden to contract a marriage at all until after the Cortes shall have examined and approved the stipulations involved. The age of majority of the sovereign is fixed at sixteen years. When the king is a minor, his father or his mother, or, in default of a living parent, the relative who stands next in the order of succession, is constituted regent, provided always that such person be a Spaniard at least twenty years of age and not by law excluded from the succession. Should there be no one upon whom the regency may lawfully devolve, it is the duty of the Cortes to appoint a regency of one, three, or five persons. If, at any time, in the judgment of the Cortes, the sovereign becomes incapacitated to rule, a regency is required to be vested in the crown prince, provided he be sixteen years of age. In default of a qualified crown prince the regency devolves upon the queen; and in default of both son and queen, upon a person determined in accordance with the rules already mentioned.

**679. Powers of the Crown.**—The powers of the crown are of the sort common among continental monarchies. By the constitution they are thrown into two groups, i. e., those which may be exercised freely and independently and those which may be exercised only upon the authorization of a special law. Enumeration of the first group begins with the sweeping statement that "the power of executing the laws is vested in the king, and his authority extends to everything which conduces to the preservation of public order at home and the security of the state abroad, in conformity with the constitution and the laws."[2] Powers specifically named include the approval and promulgation of the laws; the issuing of decrees, regulations, and instructions designed to facilitate the execution of the laws; the appointment and dismissal of ministers and of civil officials generally; command of the army and navy and direction of the land and naval forces; the declaration of war and the conclusion of peace;[3] the conduct of diplomatic and commercial relations with foreign states; the pardoning of offenders; the

[1] Art. 62. Dodd, Modern Constitutions, II., 212.

[2] Art. 50. Ibid., II., 210.

[3] It is required that subsequent to a declaration of war or the conclusion of peace the king shall submit to the Cortes a report accompanied by pertinent documents.

control of the coinage; and the conferring of honors and distinctions of every kind. Of powers which the sovereign may exercise only in pursuance of authority specially conferred by law there are five, as follows: alienation, cession, or exchange of any portion of Spanish territory; incorporation of new territory; admission of foreign troops into the kingdom; ratification of all treaties which are binding individually upon Spaniards, and of treaties of offensive alliance which stipulate the payment of subsidies to any foreign power, or which relate especially to commerce; and abdication of the crown in favor of the heir-presumptive.

**680. The Ministry: Organization and Functions.**—In Spain, as in constitutional states generally, the powers appertaining to the executive are exercised in the main by the ministers. Concerning the ministry the constitution has little to say. It, in truth, assumes, rather than makes specific provision for, the ministry's existence. It confers upon the crown the power freely to appoint and to dismiss ministers; it stipulates that ministers may be senators or deputies and may participate in the proceedings of both legislative chambers, but may vote only in the chambers to which they belong; and, most important of all, it enjoins that ministers shall be responsible, and that no order of the king may be executed unless countersigned by a minister, who thereby assumes personal responsibility for it. This principle of ministerial responsibility, which found its first expression in Spain in the constitution of 1812, is enforced nowadays sufficiently, at least, to ensure the nation, through the Cortes, some actual control over the policies and measures of the executive. Of ministries there are at present nine, as follows: Foreign Affairs; Justice; Finance; War; Marine; Interior; Public Instruction and Fine Arts; Commerce; and Public Works. At the head of the ministerial council is a president, or premier, who, under royal approval, selects his colleagues, but ordinarily assumes himself no portfolio. It is the function of the ministers not only to serve as the heads of executive departments and to explain and defend in the legislative chambers the acts of the government, but, in their collective capacity, to formulate measures for presentation to the Cortes and, especially, to submit every year for examination and discussion a general budget, accompanied by a scheme of taxation or other proposed means of meeting prospective expenditures. In each chamber there is reserved for the ministers of the crown a front bench to the right of the presiding official. The practice of interpellation exists, although ministries rarely retire by reason of a vote of censure arising therefrom. But any minister may be impeached by the Congress before the Senate. In Spain, as in

France and Italy, the parliamentary system is nominally in operation; but, as in the countries mentioned, the multiplicity and instability of party groups render the workings of the system totally different from what they are in Great Britain. Ministries are invariably composite rather than homogeneous in political complexion, with the consequence that they are unable to present a solid front or long to retain their hold upon the nation's confidence.

## V. The Cortes

**681. The Senate: Composition.**—The legislative powers of the kingdom are vested in "the Cortes, together with the king." The Cortes consists of two co-ordinate chambers, the Senate and the Congress of Deputies. In the composition of the Senate the prescriptive, appointive, and elective principles are curiously intertwined, the chamber containing one group of men who are members in their own right, another who are appointed by the crown and sit for life, and a third who are elected by the corporations of the state and by the large taxpayers. In number the first two categories jointly may not exceed 180; the third is fixed definitely at that figure. In point of fact the life senators nominated by the crown number 100, while the quota of prescriptive members varies considerably. This last-mentioned group comprises grown sons of the sovereign and of the heir-presumptive; the admirals of the navy and the captains-general of the army; the patriarch of the Indies and the archbishops; the presidents of the Council of State, the Supreme Court, the Court of Accounts, and the Supreme Councils of War and Marine, after two years of service; and grandees of Spain [1] in their own right, who are not subjects of another power and who have a proved yearly income of 60,000 pesetas ($12,000) derived from real property of their own, or from rights legally equivalent to real property.[2]

**682. Appointment and Election of Senators.**—Appointment of senators by the crown is made by special decree, in which must be stated the grounds upon which each appointment is based. In the selection of appointees the sovereign is not entirely free, but since the constitution designates no fewer than twelve classes from which appointments may be made, the range of choice is large. Among the categories enumerated are the presidents of the legislative chambers; deputies who have been members of as many as three congresses, or who have served during as many as eight sessions; ministers of the crown; bishops; grandees; lieu-

[1] The rank of grandee (*grande*) is a dignity conferred by the sovereign, either for life or as an hereditary honor.

[2] Art. 21. Dodd, Modern Constitutions, II., 204.

tenant-generals of the army and vice-admirals of the navy, of two years' standing; ambassadors, after two years of active service, and ministers plenipotentiary, after four years; presidents and directors of the half-dozen royal academies, and persons who in point of seniority belong within the first half of the list of members of these respective bodies; head professors in the universities, who have held this rank and have performed the duties pertaining to it through a period of four years; and a variety of other administrative, judicial, and professional functionaries. Persons belonging to any one of these groups, however, are eligible for appointment only in the event that they enjoy an annual income of 7,500 pesetas ($1,500), derived from property of their own or from salaries of permanent employments, or from pensions or retirement allowances. In addition to the classes mentioned persons are eligible who for two years have possessed an annual income of 20,000 pesetas, or who have paid into the public treasury a direct tax of 4,000 pesetas, provided that in addition they possess titles of nobility, or have been members of the Cortes, provincial deputies, or mayors in capitals of provinces or in towns of more than 20,000 inhabitants. Appointments are made regularly for life.

The conditions under which the quota of 180 elected senators are chosen were defined by a statute of February 8, 1877. One senator is chosen by the clergy in each of the nine archbishoprics; one by each of the six royal academies; one by each of the ten universities; five by the economic societies; and the remaining 150 by electoral colleges in the several provinces. The electoral college is composed of members of the provincial deputations and of representatives chosen from among the municipal councillors and largest taxpayers of the towns and municipal districts. But no one may become a senator by election who would be ineligible, under the conditions above mentioned, to be appointed to a seat by the crown. And it is required in all cases that to become a senator one must be a Spaniard, must have attained the age of thirty-five, must have the free management of his property, and must not have been subjected to criminal proceedings, nor have been deprived of the exercise of his political rights. The term of elected senators is ten years. One-half of the number is renewed every five years; but upon a dissolution of the elected portion of the chamber by the crown, the quota is renewed integrally.[1]

**683. The Congress of Deputies: Composition and Election.**—The lower legislative chamber is composed of deputies chosen directly by the inhabitants of the several electoral districts into which the kingdom is divided. From the adoption of the present constitution until 1890 the

[1] Arts. 20–26. Dodd, Modern Constitutions, II., 203–206.

franchise was restricted severely by property qualifications. A reform bill which became law June 29, 1890, however, re-established in effect the scheme of manhood suffrage which had been in operation during the revolutionary epoch 1869–1875. Under the provisions of a law of August 8, 1907, by which the electoral system was further regulated, the franchise is conferred upon all male Spaniards who have attained the age of twenty-five, who have resided in their electoral district not less than two years, and who have not been deprived judicially of their civil rights.[1] Except, indeed, in the case of certain judicial officials and of persons more than seventy years of age, the exercise of the voting privilege is, as in Belgium and in some of the Austrian provinces, compulsory. The constitution requires that there shall be at least one deputy for every 50,000 inhabitants. The total membership of the Congress is at present 406. In the majority of districts but a single deputy is chosen, but in twenty-eight of the larger ones two or more are elected by *scrutin de liste*, with provision for the representation of minorities. In districts in which two or three deputies are to be chosen, each elector votes for one fewer than the number to be elected; in districts where from four to seven are to be chosen, the elector votes for two fewer than the total number; and where the aggregate number is eight to ten, or more than ten, he votes for three or four fewer, respectively. Any Spaniard who is qualified for the exercise of the suffrage is eligible for election, and for indefinite re-election, as a deputy, save that no member of the clergy may be chosen. The term of membership is five years, though by reason of not infrequent dissolutions the period of service is actually briefer. As is true also of senators, deputies receive no pay for their services.[2]

**684. Sessions and Status of the Chambers.**—The Cortes, consisting thus of the Senate and the Congress of Deputies, is required by the constitution to be convened by the crown in regular session at least once each year. Extraordinary sessions may be held, and upon the death or incapacitation of the sovereign the chambers must be assembled forthwith. To the crown belongs the power not only to convene, but also to suspend and to terminate the sessions, and to dissolve, simultaneously or separately, the Congress and the elective portion of the Senate. In the event, however, of a dissolution, the sovereign is obliged to convene the newly constituted Cortes within the space

[1] There is the customary regulation that soldiers and sailors in active service may not vote.

[2] J. Vila Serra, Manual de elecciones de Diputados a Cortes (Valencia, 1907); J. Lon y Albareda, Nueva ley electoral de 8 de Agosto de 1907, comentada (Madrid, 1907); M. Vivanco y L. San Martin, La reforma electoral (Madrid, 1907).

of three months. Except when it devolves upon the Senate to exercise its purely judicial functions, neither of the chambers may be assembled without the other. In no case may the two chambers sit as a single assembly, or deliberate in the presence of the sovereign. Each body is authorized to judge the qualifications of its members and to frame and adopt its own rules of procedure. The Senate elects its secretaries, but its president and vice-president are designated, for each session, and from the senators themselves, by the crown. The Congress, on the other hand, elects from its membership all of its own officials. Sessions of both chambers are public, though "when secrecy is necessary" the doors may be closed. A majority of the members constitutes a quorum, and measures are passed by a majority vote. No senator or deputy may be held to account by legal process for any opinion uttered or for any vote cast within the chamber to which he belongs; and, save when taken in the commission of an offense, a member is entitled to all of the safeguards against arrest and judicial proceedings which are extended customarily to members of legislative bodies in constitutional states.[1]

**685. Functions and Powers of the Cortes.**—The function of the Cortes is primarily legislative. Each chamber shares with the crown the right to initiate measures, and no proposal can become law until it has received the sanction of the two houses. Rejection of a bill by either chamber, or by the crown, precludes the possibility of a reappearance of the project during the continuance of the session. Measures relating to taxation and to the public credit must be presented, in the first instance, in the Congress of Deputies, and it is made the specific obligation of the Government every year to lay before that body for examination and approval a budget of revenues and expenditures. Only upon authority of law may the Government alienate property belonging to the state, or borrow money on the public credit. Under Spanish constitutional theory the Cortes is the agent of the sovereign nation. It is authorized, therefore, not only to discharge the usual functions of legislation but also to do three other things of fundamental importance. In the first place, it receives from the sovereign, from the heir-apparent, and from the regent or regency of the kingdom, the oath of fidelity to the constitution and the laws. In the second place, under provisions contained within the constitution,

[1] It is to be observed that these guarantees are not quite absolute. During the crisis of 1904 the Maura government required the Congress to suspend the legislative immunity of no fewer than 140 members, and for the first time since 1834 deputies were handed over to the courts to be tried for offenses of a purely political character.

it elects the regent or regency and appoints a guardian for a minor sovereign. Finally, to maintain the responsibility of ministers to the lower chamber, and, through it, to the nation, the Congress is authorized to impeach, and the Senate to try, at any time any member of the Government.[1]

## VI. Political Parties

**686. Party Groups After 1869.**—Since the dawn of constitutionalism political life in Spain has comprised much of the time a sheer game between the "ins" and the "outs", in which issues have counted for little and the schemings of the caciques, or professional wire-pullers and bosses, have counted for well-nigh everything. For the exercise of independent popular judgment upon fundamental political questions aptitude has been meager and opportunity rare. Political parties there have been, and still are, and certain of them have exhibited distinct power of survival. Yet it must be observed that even the stablest of them are essentially the creatures of the political leaders and that at no time have they exhibited the broadly national rootage of political parties in other states of western Europe.

Party cleavages in Spain had their beginning early in the nineteenth century, but for the origins of the groups which share in an important manner nowadays in the politics of the kingdom it is not necessary to return to a period more remote than that of the revolution of 1868. Subsequent to the expulsion of Queen Isabella at least four groups were thrown into more or less sharp relief. One was the Carlists, supporters of the claims of Don Carlos and, in respect to political principle, avowed absolutists. A second comprised the Republicans, led by Castelar, whose demand for the establishment of a republic, rejected in 1869, carried the day upon the breakdown of the Amadeo monarchy four years later. Between the Carlists, on the one hand, and the Republicans, on the other, stood the mass of the political leaders, and, so far as may be judged, of the nation also. All were agreed upon the general principle of constitutional monarchy. But upon the precise nature of the government which had been established and of the public policy which ought to be pursued there was, and could be, little agreement. The consequence was a sharp-cut cleavage, by which there were set off in opposition to each other two large parties, the

[1] Arts. 32–47. Dodd, Modern Constitutions, II., 207–209. On the Cortes may be consulted, in addition to the constitutional treatises mentioned on pp. 612–613, A. Borrego, Historia de las Cortes de Españo durante el siglo XIX. (Madrid, 1885), and A. Pons y Umbert, Organización y funcionamento de las Cortes segun las constituciones españolas y reglamentacion de dicho cuerpo colegislador (Madrid, 1906).

Conservatives and the Liberals; and, save for the brief ascendancy of the Republicans in 1873–1874, it is these two parties which have shared between them the government of the kingdom from the establishment of the limited monarchy in 1869 to the present day. Both of these leading parties have been pledged continuously to maintain the constitution and all of the popular privileges—freedom of speech, liberty of the press, safety of property, the right of establishing associations, and the like—guaranteed by that instrument. Upon the *methods* by which these things shall be maintained the parties originally divided and still are disagreed. Fundamentally, the policy of the Liberals is to commit the guardianship of public privileges to the courts of justice, while that of the Conservatives is to retain it rather in the hands of the ministerial and administrative authorities. In the normal course of development the Liberal party has tended to draw to itself those liberal elements generally which are satisfied to rely upon legal means for the realization of their purposes, e. g., the free-traders, the labor forces, and many of the socialists. Similarly the Conservative party has attracted a considerable proportion of the reactionaries, especially the Ultramontanes, by whom special stress is placed upon the maintenance of peace with the Vatican, and many representatives of the old Moderate party which was swept out of existence by the overturn of 1868.

**687. Liberals and Conservatives: Cánovas and Sagasta.**—The first public act of Alfonso XII., following his proclamation as king, December 29, 1874, was to call to his side in the capacity of premier Cânovas del Castillo, by whom was formed a strong Conservative ministry. Consequent upon the convocation of the Cortes of 1876 and the adoption of the new constitution of that year, the various groups of Liberals were drawn into a fairly compact opposition party, supporting the Alfonsist dynasty and the new constitutional régime, but proposing to labor, by peaceful means, for the restoration of as many as possible of the more liberal features of the constitution of 1869. It is of interest to observe that the party, in its earlier years, was encouraged by Cânovas, on the theory that there would be provided by it a natural and harmless outlet for inevitable ebullitions of the liberal spirit. Under the able leadership of Sagasta the development of the party was rapid, and in 1881 Cânovas determined to give the country a taste of Liberal rule. Following a collusive "defeat" the premier retired, whereupon Sagasta was designated premier and a Liberal ministry was established which held office somewhat more than two years. By the Republicans and other radical forces the ministry of Sagasta was harassed unsparingly, just as had been that

of Cânovas, and the actual working policies of the two differed in scarcely any particular. Within the Liberal ranks, indeed, a "dynastic Left" became so troublesome that Sagasta, after two years, yielded office to the leader of the disaffected elements, Posada Herrera. The only effect of the experiment was to demonstrate that between the Conservatives led by Cánovas and the Liberals led by Sagasta there was no room for a third party.

In 1885 Cánovas returned to power, but for only a brief interval, for upon the establishment of the regency of Queen Christina, following the death of Alfonso XII., November 25, 1885, Sagasta was called upon to form the first of a series of ministries over which he presided continuously through the ensuing five years. In the memorable Pact of El Pardo it had been agreed between the Liberal and Conservative leaders that each would assist the other in the defense of the dynasty and of the constitution, and although Sagasta had avowed the intention of reintroducing certain principles of the constitution of 1869 he was pledged to proceed in a cautious manner and a conciliatory spirit. The elections of 1884 yielded a substantial Conservative majority in both chambers of the Cortes. None the less the Conservatives accorded the Liberal government their support, until by the elections of 1886 the Liberals themselves acquired control of the two houses. Throughout three years Castelar and the more moderate Republicans co-operated actively with the Government in the reintroduction of jury trial, the revival of liberty of the press, and a number of other liberal measures; but the Government was annoyed continually by attacks and intrigues participated in by both the less conciliatory Republicans and the Carlists. The crowning achievement of the Sagasta ministry was the carrying through of the manhood suffrage act of June 29, 1890. Within a month after the promulgation of the suffrage law the regent gave Sagasta to understand that the time had arrived for a change of leaders. The Cánovas ministry which was thereupon established endured two and a half years, and was given distinction principally by its introduction, in 1892, of the thoroughgoing protectionist régime which prevails in Spain to-day. The Conservatives falling into discord, Cânovas resigned, December 8, 1892; and at the elections of the following year the Conservatives carried only one hundred seats in the Chamber. During the period from December, 1892, to March, 1895, Sagasta was again at the helm.

**688. The American War and Ministerial Changes, 1895–1902.**— Between 1895 and 1901 there was a rapid succession of ministries, virtually all of which were both made and unmade by situations aris-

ing from the war in Cuba and the subsequent contest with the United States. In the hope of averting American intervention a new Cânovas government, established in 1895, brought forward a measure for the introduction of home rule in Cuba, but while the bill was pending, Cânovas was assassinated, August 9, 1897, and the proposition failed. The new Conservative cabinet of General Azcarraga soon retired, and although the Sagasta government which succeeded recalled General Weyler from Cuba and inaugurated a policy of conciliation, the situation had got beyond control and war with the United States ensued. By the succession of Spanish defeats the popularity of the Liberal régime was strained to the breaking point, and at the close of the war Sagasta's ministry gave place to a ministry formed by the new Conservative leader Silvela. The elections of April 16, 1899, yielded the Silvelists a majority and the ministry, reconstituted September 28 of the same year, retained power until March 6, 1901. At that date the Liberals gained the upper hand once more; and, with two brief intervals, Sagasta remained in office until December 3, 1902. Within scarcely more than a month after his final retirement, the great Liberal leader passed away.

**689. Parties Since the Death of Sagasta.**—A second Silvela ministry, established December 6, 1902, brought the Conservatives again into power. This ministry, which lasted but a few months, was followed successively by four other Conservative governments, as follows: that of Villaverde, May, 1903, to December, 1903; that of Antonio Maura y Montanes, December, 1903, to December, 1904; the second of General Azcarraga, December, 1904, to January, 1905; and the second of Villaverde, from January, 1905, to June, 1905. Of these the most virile was that of Maura, a former Liberal, whose spirit of conciliation and progressiveness entitled him to be considered one of the few real statesmen of Spain in the present generation.

Following the death of Sagasta the Liberals passed through a period of demoralization, but under the leadership of Montero Rios they gradually recovered, and in June, 1905, the government of Villaverde was succeeded by one presided over by Rios. At the elections of September 10, 1905, the Ministerialists secured 227 seats and the Conservatives of all groups but 126 (the remainder being scattered); but discord arose and, November 29 following, the cabinet of Rios resigned. Upon the great ecclesiastical questions of the day—civil marriage, the law of associations, and the secularization of education—both parties, but especially the Liberals, were disrupted completely, and during the period of but little more than a year between the retirement of Rios and the return to power of Maura, January 24, 1907,

no fewer than five ministries sought successively to grapple with the situation. Under Maura a measure of stability was restored. The premier, although a Catholic, was moderately anti-clerical. His principal purpose was to maintain order and to elevate the plane of politics by a reform of the local government. At the elections of April 21, 1907, the Conservatives won a victory so decisive that in the Congress they secured a majority of 88 seats over all other groups combined.[1] The fall of the Maura ministry, October 21, 1909, came in consequence largely of the Moroccan crisis, but more immediately by reason of embarrassment incident to the execution of the anarchist-philosopher Señor Ferrer. The Liberal ministry of Moret, constituted October 22, 1909, lacked substantial parliamentary support and was short-lived. February 9, 1910, there was established under Canalejas, leader of the democratic group, a cabinet representative of various Liberal and Radical elements and made up almost wholly of men new to ministerial office.[2]

**690. The Elections of 1910.**—The first important act of Canalejas was to persuade the sovereign, as Moret had vainly sought to do, to dissolve the Cortes, to the end that the Liberal ministry might appeal to the country. The elections were held May 10. They were of peculiar interest by reason of the fact that now for the first time there was put into operation an electoral measure of the recent Maura government whereby it is required that every candidate for a seat in the lower chamber shall be placed in nomination by two ex-senators, two ex-deputies, or three members of the general council of the province. This regulation had been opposed by the Republicans and by the radical elements generally on the ground that it put in the hands of the Government power virtually to dictate candidacies in many electoral districts, and the results seemed fairly to sustain the charge. May 1, in accordance with a provision of the law, 120 deputies—upwards of one-third of the total number to be chosen—were declared elected, by reason of having no competitors. Of these 70 were Liberals, 39 were Conservatives, and the remainder belonged to minor groups. In the districts in which there were contests the Government also won decisively a few days later, as it did likewise in the senatorial elections of May 15. The results of the elections, as officially reported, may be tabulated as follows:

[1] The exact distribution of seats was as follows: Conservatives, 256; Liberals, 66; Solidarists, 53; Republicans, 32; Democrats, 9; Independents, 8.

[2] November 12, 1912, Premier Canalejas was assassinated. He was succeeded by the president of the Congress of Deputies, Alvaro de Romanones, under whom the Liberal ministry was continued in office.

| | CONGRESS OF DEPUTIES | SENATE *Elected indirectly by the people, May 15* | SENATE *Elected by the corporations, etc., May 15* | SENATE *Total elected* | SENATE *Immovable portion of Senate* | *Grand Total* |
|---|---|---|---|---|---|---|
| Liberals | 229 | 92 | 11 | 103 | 70 | 173 |
| Dissenting Liberals | 0 | 3 | 0 | 3 | 0 | 3 |
| Conservatives | 107 | 35 | 7 | 42 | 77 | 119 |
| Republicans | 40 | 3 | 1 | 4 | 0 | 4 |
| Carlists | 9 | 4 | 0 | 4 | 2 | 6 |
| Regionalists | 8 | 4 | 1 | 5 | 0 | 5 |
| Integrists | 7 | 0 | 0 | 0 | 0 | 0 |
| Independents | 5 | 1 | 1 | 2 | 16 | 18 |
| Socialists | 1 | 0 | 0 | 0 | 0 | 0 |
| Catholics | 0 | 5 | 0 | 5 | 8 | 13 |
| | 406 | 147 | 21 | 168 | 173 [1] | 341 |

**691. Republicanism and Socialism.**—Among other accounts, the elections of 1910 were notable by reason of the return to the Congress for the first time of a socialist member. In Madrid, as in other centers of population, the Government concluded with the Conservatives an *entente* calculated to hold in check the rising tide of socialism and republicanism. Under the stimulus thus afforded the Socialists at last responded to the overtures which the Republicans had long been making, and the coalition which resulted was successful in returning to Parliament the Socialist leader Iglesias, together with an otherwise all but unbroken contingent of Republicans. In Barcelona and elsewhere Republican gains were decisive. None the less the Republican forces continue to be so embarrassed by factional strife as to be not really formidable. The Socialists, however, exhibit a larger degree of unity. As in Italy, France, and most European countries, they are growing both in numbers and in effectiveness of organization. In Spain, as in Italy, the historic parties which have been accustomed to share between them the control of the state have, in reality, long since lost much of the vitality which they once possessed. The terms "Liberal" and "Conservative" denote even less than once they did bodies of men standing for recognized political principles, or even for recognized political policies. The field for the development of parties which shall take more cognizance of the nation's actual conditions and be more responsive to its demands seems wide and, on the whole, not unpromising.[2]

[1] Some seats vacant.

[2] On political parties in Spain two older works are A. Borrego, Organización de los Partidos (Madrid, 1855) and El Partido Conservador (Madrid, 1857). Two val-

## VII. The Judiciary and Local Government

**692. Law and Justice.**—The law of Spain is founded upon the Roman law, the Gothic common law, and, more immediately, the Leyes de Toro, a national code promulgated by the Cortes of Toro in 1501. By the constitution it is stipulated that the same codes shall be in operation throughout all portions of the realm and that in these codes shall be maintained but one system of law, to be applied in all ordinary civil and criminal cases in which Spanish subjects shall be involved. The civil code which is at present in operation was put in effect throughout the entire kingdom May 1, 1889. The penal code dates from 1870, but was amended in 1877. The code of civil procedure was put in operation April 1, 1881, and that of criminal procedure, June 22, 1882. A new commercial code took effect August 22, 1885.

"The power of applying the laws in civil and criminal cases," says the constitution, "shall belong exclusively to the courts, which shall exercise no other functions than those of judging and of enforcing their judgments." [1] What courts shall be established, the organization of each, its powers, the manner of exercising them, and the qualifications which its members must possess, are left to be determined by law. The civil hierarchy to-day comprises tribunals of four grades: the municipal courts, the courts of first instance, the courts of appeal, and the Supreme Court at Madrid. The justices of the peace of the municipal courts are charged with the registration of births and deaths, the preparation of voting lists, the performance of civil marriage, and the hearing of petty cases to the end that conciliation, if possible, may be effected between the litigants. No civil case may be brought in any higher court until effort shall have been made to adjust it in a justice's tribunal. In each of the 495 *partidos judiciales*, or judicial districts, of the kingdom is a court of first instance, empowered to take cognizance of all causes, both civil and criminal. From these tribunals lies appeal in civil cases to fifteen *audiencias territoriales*. By a law of April 20, 1888—the measure by which was introduced the

uable books are E. Rodriguez Solis, Historia del partido republicano español (Madrid, 1893) and B. M. Andrade y Uribe, Maura und di Konservativen Partei in Spanien (Karlsruhe, 1912). The subject is sketched excellently to 1898 in Clarke, Modern Spain, Chaps. 14–16. In the domain of periodical literature may be mentioned A. Marvaud, Les élections espagnoles de mai 1907, in *Annales des Sciences Politiques*, July, 1907; C. David, Les élections espagnoles, in *Questions Diplomatiques et Coloniales*, May 16, 1907; A. Marvaud, Un aspect nouveau du Catalanisme, ibid., June 16, 1907; La situation politique et financière de l'Espagne, ibid., Dec. 16, 1908; La rentrée des Cortes et la situation en Espagne, ibid., June 16, 1910. A well-informed sketch is L. G. Guijarro, Spain since 1898, in *Yale Review*, May, 1909.

[1] Art. 76. Dodd, Modern Constitutions, II., 213.

use of the jury in the majority of criminal causes—there were established forty-seven *audiencias criminales*, one in each province of the kingdom, and these have become virtually courts of assize, their sessions being held four times a year. Finally, at Madrid is established a Supreme Court, modelled on the French Court of Cassation, whose function it is to decide questions relating to the competence of the inferior tribunals and to rule on points of law when appeals are carried from these tribunals. Cases involving matters of administrative law, decided formerly by the provincial councils and the Council of State, are disposed of now in the *audiencias* and in the fourth chamber of the Supreme Court.[1]

Justice is administered in the name of the king. All judgments must be pronounced in open court, and by the constitution it is guaranteed specifically that proceedings in criminal matters shall be public. In every tribunal the state is represented by *abogados fiscales* (public prosecutors) and counsel nominated by the crown. Magistrates and judges, appointed by the crown, may not be removed, suspended, or transferred, save under circumstances minutely stipulated in the organic judicial laws. But judges are responsible personally for any violation of law of which they may be guilty.

**693. Local Government: the Province and the Commune.**—Prior to 1833 the Spanish mainland comprised thirteen provinces, by which were preserved in a large measure both the nomenclature and the geographical identity of the ancient kingdoms and principalities from which the nation was constructed. In the year mentioned the number of provinces was increased to forty-seven, at which figure it remains at the present day. The essential agencies of government in the province are two—the governor and the *diputacion provincial*, or provincial council. The governor is appointed by the crown and it is his function, under the direction of the Minister of the Interior, to represent the central government in the provincial council and in the general administrative business of the province. The provincial council is composed of members chosen by the voters of the province, which means, under the law of June 28, 1890, all male Spaniards of the age of twenty-five. Under the presidency of the governor the body meets yearly, and in the intervals between sessions it is represented by a *commission provinciale*, or provincial committee, elected annually. The size of the council varies roughly according to the population of the province.

The smallest governmental unit is the commune, and the number

[1] G. Marin, La jurisdiction contentieuse administrative en Espagne, in *Revue du Droit Public*, Oct.–Dec., 1906.

of communes in the kingdom is approximately 8,000. In each is an *ayuntamiento*, or council, the members of which, varying in number from five to thirty-nine, are elected for four years (one-half retiring biennially) by those residents of the commune who are qualified to vote for members of the provincial councils. To serve as the chief executive officer of the municipality the *ayuntamiento* regularly elects from its own number an *alcalde*, or mayor, although in the larger towns appointment of the mayor is reserved to the crown.

**694. Principles of Local Control.**—After stipulating that the organization and powers of the provincial and municipal councils shall be regulated by law, the constitution lays down certain fundamental principles to be observed in the enactment of such legislation. These are (1) the management of the local interests of the province and the commune shall be left entirely to the respective councils; (2) the estimates, accounts, and official acts of these bodies shall invariably be made public; (3) the fiscal powers of the councils shall be so determined that the financial system of the nation may never be brought in jeopardy; and (4) in order to prevent the councils from exceeding their prerogatives to the prejudice of general and established interests the power of intervention shall be reserved to the sovereign and, under certain circumstances, to the Cortes.[1] The theory, carried over from the liberal constitution of 1869, is that within the spheres marked out for them by law the provinces and the municipalities are autonomous. And it undoubtedly is true that, compared with the system in operation prior to 1868, the present régime represents distinct decentralization. None the less it must be said that in practice there is ever a tendency on the part of the central authorities to encroach upon the privileges of the local governing agencies, and through several years there has been under consideration a reorganization of the entire administrative system in the direction of less rather than more liberalism. In 1909 a Local Administration bill devised by the recent Maura ministry was adopted by the lower chamber of the Cortes. This measure, which was combatted with vigor by the Liberal party, proposed to enlarge the fiscal autonomy of the communes, but at the same time to modify the provincial and municipal electoral system by the establishment of an educational qualification, by the admission of corporations to electoral privileges, and by otherwise lessening the weight of the vote of the individual citizen. In the Senate the measure met determined opposition, and as yet its fate is uncertain.[2]

[1] Art. 84. Dodd, Modern Constitutions, II., 215.

[2] J. Gascon y Marin, La réforme du régime local en Espagne, in *Revue du Droit Public*, April–June, 1909.

# CHAPTER XXXIV

## THE GOVERNMENT OF PORTUGAL

### I. A Century of Political Development

**695. The Napoleonic Subjugation and the Constitution of 1820.**—The government of Portugal at the opening of the nineteenth century was no less absolute than was that of Spain. The Cortes was extinct, and although Pombal, chief minister during the period 1750–1777, had caused all Portuguese subjects to be made eligible to public office and had introduced numerous economic and administrative reforms, nothing had been permitted to be done by which the unrestricted authority of the crown might be impaired. The country was affected but slightly by the Revolution in France. In 1807, however, it fell prey to Napoleon and the royal family was obliged to take refuge in the dependency of Brazil. With the aid of the English the power of the conqueror was broken in 1808, and through a number of years the government was administered nominally by a commission designated by the absentee regent, Dom John, though actually by a British dictatorship. In 1815 Brazil was raised to the rank of a co-ordinate kingdom, and from that year until 1822 the official designation of the state was "the United Kingdom of Portugal, Brazil, and the Algarves." In 1816 the mad queen Maria I. died and the regent succeeded to the affiliated thrones as John VI. His original intention was to remain in America, but in 1820 a general revolt in Portugal culminated in the calling of a national assembly by which there was framed a constitution reproducing the essentials of the Spanish instrument of 1812, and by this turn of events the sovereign was impelled, in 1821, to set sail for the mother country, leaving as regent in Brazil his son Dom Pedro. Fidelity to the new constitution was pledged perforce, but the elements of reaction gathered strength swiftly, and before the close of 1823 the instrument was abrogated. The only tangible result of the episode was the creation of a constitutional party which thereafter was able much of the time to keep absolutism upon the defensive.[1]

[1] In the meantime a revolt which was impending in Brazil at the time of King John's withdrawal had run its course. September 7, 1822, the regent Dom Pedro,

**696. The Constitutional Charter of 1826: Miguelist Wars.**—The death of John VI., March 10, 1826, precipitated a conflict of large importance in the history of Portuguese constitutionalism. The heir to the throne was Dom Pedro, Emperor of Brazil, who as sovereign of Portugal, assumed the title Pedro IV. Having inaugurated his reign by the grant of a constitutional charter whereby there was introduced a parliamentary system of government on the pattern of that in operation in Great Britain, the new king, being unwilling to withdraw from America, made over the Portuguese throne to his seven-year-old daughter, Dona Maria da Gloria, with the stipulation that when she should come of age she should be married to her uncle, Dom Miguel, in whom meanwhile the regency was to be vested. Amid enthusiasm the *Carta Constitucional* was proclaimed at Lisbon, July 31, 1826, and in August there was established a responsible Liberal ministry under Saldanha. When, however, in 1828, the regent at length arrived in Portugal, a clerical and absolutist counter-revolution was found to be under way, and by the reactionary elements he was received, not as regent, but as king. By a Cortes of the ancient type, summoned in the stead of the parliament provided for in the Charter, Dom Miguel was tendered the crown, which, in violation of all the pledges he had given, he made haste to accept. That he might vindicate the claims of his daughter, the Emperor Pedro, in April, 1831, abdicated his Brazilian throne and, repairing to Portugal, devoted himself unsparingly to the task of deposing the usurper. The outcome of the wars which ensued was that in 1834 Dom Miguel was overthrown and banished perpetually from the kingdom. Until his death, in September of the same year, Pedro acted as regent for his daughter, and under his comparatively enlightened rule the Charter of 1826 was restored and the state was set once more upon the path of reform. Upon his death the Princess Maria assumed the throne as Maria II.[1]

**697. Nominal Constitutionalism, 1834–1853.**—The reign of Queen Maria (1834-1853) was a period of factional turbulence. There were now three political groups of principal importance: the Miguelists, representing the interests of the repudiated absolutist régime; the Chartists, who advocated the principles of the moderate constitution (that of 1826)

who freely cast in his lot with the revolutionists, proclaimed the country's independence, and some weeks later he was declared constitutional emperor. Protest from Lisbon was emphatic, but means of coercing the rebellious colony were not at hand, and, in 1825, under constraint of the powers, King John was compelled to recognize the independence of his transoceanic dominion.

[1] Cambridge Modern History, X., Chap. 10; Lavisse et Rambaud, Histoire Générale, X., Chap. 6; H. M. Stephens, Portugal (New York, 1903), Chap. 18. A general treatise covering the period is W. Bollaert, The Wars of Succession of Portugal and Spain from 1821 to 1840 (London, 1870).

at the time in operation; and the Septembrists,[1] who were attached rather to the principles of the radical instrument of 1821–1822. By all, save perhaps the Miguelists, the maintenance of a constitution of some type was regarded as no longer an open question. In 1836 the Septembrists stimulated a popular rising in consequence of which the constitution of 1822 was declared again in effect until a new one should have been devised, and, April 4, 1838, there was brought forward under Septembrist auspices an instrument in which it was provided that an elected senate should take the place of the aristocratic House of Peers for which the Charter provided, and that elections to the House of Deputies should thenceforth be direct. In 1839, however, a moderate ministry was constituted with Antonio Bermudo da Costa Cabral as its real, though not its nominal, head, and by a pronunciamento of February 10, 1842, the Charter was restored to operation. Costa Cabral (Count of Thomar after 1845) ruled despotically until May, 1846, when by a combination of Miguelists, Septembrists, and Chartists he was driven into exile.[2] The Chartist ministry of Saldanha succeeded. In 1849 it was replaced by a ministry under the returned Thomar, but by a rising of April 7, 1851, Thomar was again exiled. At the head of a moderate coalition Saldanha governed peacefully through the next five years (1851–1856). The period was marked by two important developments. July 5, 1852, a so-called "Additional Act" revised the Charter by providing for the direct election of deputies, the decentralization of the executive, the creation of representative municipal councils, and the abolition of capital punishment for political offenses. A second fact of importance was the amalgamation, in 1852, of the Septembrists and the Chartists to form the party of Regeneradores, or Regenerators, in support of the Charter in its new and liberalized form.

**698. Party Rivalries: the Rotativos.**—In the constitutional history of the kingdom the reign of Pedro V. (1853–1861) possesses slight importance. There was less civil strife than during the preceding generation, but ministries took office in rapid succession and little improvement was realized in practical political conditions. The period covered by the more extended reign of Luiz I. (1861–1889) was of the same character, save that its later years were given some distinction by certain developments in the party situation. The death of the old Chartist leader Saldanha in 1876 was followed, indeed, by the appearance of a political alignment that was essentially new. Already the Regeneradores, representing the Chartist-Septembrist

[1] So called from the *coup d'état* of September, 1836, mentioned shortly.

[2] E. Bavoux, Costa Cabral; notes historiques sur sa carrière et son ministère (Paris, 1846).

coalition of 1852, had disintegrated, and in 1877 the more radical elements of the defunct party, known at first as the Historic Left, were reorganized under the name of the Progressistas, or Progressives. The new conservative elements, on the other hand, carried on the traditions and preserved the name of the original Regeneradores. In the Cortes the Progressistas assumed the position of a Constitutional Left and the surviving Regeneradores that of a Conservative Right. Both were monarchical and both were attached to the existing constitution, differing only in respect to the amendments which they would have preferred to introduce in that instrument. Of remaining parties two were of importance, i. e., the Miguelists, representing still the interests of absolutism, and the Republicans, who first acquired definite party organization in 1881.

Between 1877 and 1910 the Regeneradores and the Progressistas shared in rotation the spoils of office with such regularity that the two acquired popularly the nickname of the *rotativos*. Both were dominated by professional politicians whose skill in manipulating popular elections was equalled only by their greed for the spoils of victory. Successful operation of a parliamentary system presupposes at least a fairly healthy public opinion. But in Portugal, upwards of four-fifths of whose inhabitants are illiterate,[1] there has been no such favoring condition, and the opportunity for the demagogue and the cacique has been correspondingly tempting. Parties have been regularly mere cliques and party politics only factional strife. Throughout the period corruption was abundant and such public feeling as existed was stifled systematically. Elections were supervised in every detail by the provincial governors; agents of the Government were employed to instruct the people in their choice of representatives; and the voters did habitually precisely what they were told to do. No one ever expected an election to show results adverse to the Government. Especially unscrupulous was the manner in which the preponderating parties obstructed systematically the election of Republican and Independent deputies. As late as 1906 but one Republican was returned to the Cortes, although it was a matter of common knowledge that in many constituencies the party commanded a clear majority.

**699. The Dictatorship of Franco, 1906–1908.**—From June, 1900, to October, 1904, the Regeneradores were in power, with Ribeiro as premier. During this period two national elections, in 1900 and in 1904, yielded the controlling party substantial majorities. From October, 1904, the Progressive ministry of Luciano de Castro occupied the field, but in the spring of 1906 there took place a series of minis-

[1] By official calculation, 78.6 per cent in 1900.

terial crises in the course of which Robeiro returned for a brief interval to power. The election of April 26, 1906, gave the Regeneradores 113 seats, the Progressistas 30, and the Republicans 1. The ministerial changes by which this election was accompanied prepared the way for the establishment of the régime known in recent Portuguese history as the *dictadura*, or dictatorship. The new premier, João Franco, was one of the abler and more conscientious men in public life. Originally a Regenerator, as early as 1901 he had led a secession from the party, and in 1903 he had organized definitely a third party, the Liberal Regenerators, whose avowed end was the establishment in Portugal of true parliamentarism. In 1906 a "Liberal Concentration" was effected between Franco's followers and the Progressistas, led by Castro, and the outcome was the calling, May 19, 1906, of Franco to the premiership. That office he assumed with the determination to introduce and to carry through an elaborate programme of sorely needed fiscal and administrative reforms. If possible, his methods were to be entirely constitutional; if not, as nearly so as might prove practicable. The Cortes elected April 26 met June 6 and, being found unpromising, was dissolved. During the campaign which followed the Regenerador party, to which Franco nominally belonged, split, the Franquistas, or supporters of the premier, taking the name of New Regenerators. The returns yielded by the election of August 12 were: New Regenerators, 73 seats; Progressives, 43; Old Regenerators, 23; Republicans, 4; with scattering seats distributed among other groups.

The sitting of the Cortes which began September 29, 1906, was one of the stormiest on record. In May, 1907, when the Government seemed on the point of collapse and it was supposed that Franco would resign, the indomitable premier effected a *coup d'état* whereby the ministry was reconstituted, the Cortes was dissolved, and several important bills which were pending were proclaimed to have acquired the force of law. During the ensuing twelvemonth the government was that of a benevolent but uncompromising dictatorship. Supported by the king, the army, and a considerable body of partisans, Franco succeeded in carrying through the major portion of his reform programme. But he was opposed by the Republicans, by the professional politicians of the older parties, and by the entire hierarchy of administrative and judicial officials who shrank from impending investigation. His task was enhanced tremendously by the growing unpopularity of King Carlos, and in defense of the sovereign it was found necessary to deprive the House of Peers of its judicial functions, to replace the district and municipal councils by commissions named by the crown, and, in short, to suspend virtually all remaining vestiges

of popular government, as well as the various guarantees of individual liberty.

**700. Restoration of Normal Conditions.**—February 1, 1908, when the situation bordered on revolution, King Carlos and the crown prince Louis Philippe were assassinated and the dictatorship of Franco was brought abruptly to an end. The king's second son, who succeeded under the title of Manoel II., called together an extraordinary junta of ministers and party leaders, at whose instigation the imperious premier resigned and withdrew from the country; whereupon, under the premiership of Admiral Ferreira do Amaral, there was formed a coalition ministry, representative of all of the monarchist parties. The administrative commissions created by Franco were dissolved; the civil list, concerning which there had been grave controversy, was reduced; the House of Peers was reconstituted; the election of a new Cortes was ordered; and parliamentary institutions, suspended for a year, were revived. The various reforms, on the other hand, for which the dictator had been responsible were brought likewise to an end. The election of April 5, attended by grave disorders, yielded the Government a decisive majority and, April 29, the new sovereign formally opened the first Cortes of his reign and took oath to support the constitution. In the Chamber the old balance between the Regeneradores and the Progressistas reappeared. Of the former there were 61; of the latter, 59. The Republicans had 7 seats; a group of "Nationalists," 3; the Independents, 1; and the "Amaralists," detached supporters of the ministry, 17. Before the end of the year the Government lost its majority, and December 24 a new coalition cabinet was made up by Campos Henriques, a former minister of justice.[1]

## II. The Government of the Kingdom

**701. The Constitution.**—Before speaking of the revolution of 1910, in consequence of which the monarchy was overthrown and the present republic was established, it is desirable that brief allusion be made to the governmental system of the earlier régime. The fundamental law

[1] On the political history of Portugal since the establishment of constitutionalism see Cambridge Modern History, XI., Chap. 20, XII., Chap. 10; and Lavisse et Rambaud, Histoire Générale, XI., Chap. 9, XII., Chap. 9. A serviceable general work is J. P. Oliveira Martins, Historia de Portugal (4th ed., Lisbon, 1901). An older and more detailed treatise is H. Schaefer, Geschichte von Portugal (2d ed., Hamburg, 1874), and a useful survey is R. de Vezeley, Le Portugal politique (Paris, 1890). For a good brief survey of Portuguese party politics see A. Marvaud, La crise en Portugal et les élections d'avril 1908, in *Annales des Sciences Politiques*, July, 1908.

in operation in 1910 was the *Carta Constitucional* of 1826, remodelled and liberalized by numerous amendments. The revision accomplished by the Additional Act of 1852 has been mentioned. An amendment of July 24, 1885, provided for the gradual extinction of the right of hereditary peers to sit in the upper house and for the representation, in the Deputies, of minorities; while three amendments of importance during the reign of Carlos I. (1889–1908) were: (1) that of March 28, 1895, whereby the number of deputies was reduced from 180 to 120 and the qualifications requisite for the exercise of the suffrage were overhauled; (2) that of September 25 of the same year whereby the elective portion of the House of Peers was abolished; and (3) that of August 8, 1901, by which the conditions of election to the House of Deputies were revised. In its final form the constitution was an instrument of unusual length, comprising eight "titles" and 145 articles, some of which were very comprehensive.[1]

**702. The Crown and the Ministry.**—Provision was made for the exercise of four distinct categories of powers, i. e., executive, moderative, legislative, and judicial. Of these the first two were lodged in the sovereign, the third in the sovereign and Cortes conjointly, and the fourth in tribunals established under provision of the constitution. The crown was vested permanently in the descendants of Dona Maria II., of the House of Braganza, and, in default thereof, in the nearest collateral line. The succession was regulated on the principle of primogeniture, with preference to the male line, and during a sovereign's minority the regency devolved upon the nearest relative, according to the order of succession, who had attained the age of twenty-five. Associated with the sovereign was a ministry and a council of state. The ministry consisted of a premier, usually without portfolio, and a variable number of heads of departments (in 1910, seven),[2] and it was a principle of the constitution that, the crown being legally irresponsible, no executive act might be adjudged valid unless signed by one or more of the members of the ministerial group. For all of their acts the ministers were responsible nominally to the Cortes, although in point

[1] The text of the constitution was published by the state under the title of Carta Constitucional da Monarchia Portugueza . . . e Diplomas Correlativos (Lisbon, 1890). An annotated translation is in Dodd, Modern Constitutions, II., 145–179. An excellent treatise is J. J. Tavares de Medeiros, Das Staatsrecht des Königsreichs Portugal (Freiburg, 1892), in Marquardsen's Handbuch. Important Portuguese works include L. P. Coimbre, Estudios sobre a Carta Constitucional de 1814 e Acto Addicional de 1852 (Lisbon, 1878–1880), and Coelho da Rocha, Ensaio sobre a Historia do Governo e da Legislaçao de Portugal.

[2] Foreign Affairs, Interior, Finance, Justice and Worship, War, Marine and Colonies, and Public Works.

of fact the turbulent state of politics rendered such responsibility nearly impossible to enforce. The council of state was a body composed of the crown prince (when of the age of eighteen) and of twelve men appointed by the king for life, usually from present or past ministers. It was required that the council be consulted in all affairs of weight and in general measures of public administration, especially those relating to the declaration of war, the conclusion of peace, and the conduct of diplomatic negotiations.[1]

Aside from participation in legislation, the powers of the crown (exercised at least nominally through the intermediary of the ministers and councillors) were, as has been said, of two categories, executive and moderative. The powers of an executive character were of the usual sort, i. e., the appointment of civil, military, and ecclesiastical officials; the conduct of foreign relations; the promulgation of the laws, and of decrees, instructions, and regulations requisite to the proper execution of the laws; the ordering, not less frequently than quadrennially, of an election of a new Cortes; and the supervision, in conformity with the constitution, of "all things which bear upon the internal and external security of the state." [2] Among modern constitutions those of Portugal and Brazil are unique in the distinction drawn between powers that are executive and powers that are "moderative." Under the head of moderative powers the Portuguese constitution vested in the crown the nomination of peers, the convening of the Cortes in extraordinary session, approval of the measures of the Cortes to the end that they might acquire the force of law, the proroguing and adjourning of the Cortes and the dissolving of the House of Deputies, the appointing and dismissing of ministers, the granting of amnesties, and the remitting or reducing of penalties imposed upon offenders by judicial sentence. The theory was that these were powers which the sovereign exercised in the capacity of mediator between the several organs of the governmental system, and by the constitution it was declared that this moderative power was the keystone of the entire political organization. The distinction, however, while from a certain point of view logical enough, does not appear to have possessed much practical importance.

**703. The Cortes.**—Powers of a legislative character were vested in the sovereign conjointly with a parliament of two chambers, the *Camara dos Pares*, or House of Peers, and the *Camara dos Deputados*, or House of Deputies. Collectively, the two houses were known as the *Cortes Feraes*, or, more briefly, the Cortes. Until 1885 the House of

[1] Arts. 107–112. Dodd, Modern Constitutions, II., 168–169.
[2] Arts. 75–77. Ibid., II., 162–164.

Peers consisted of members of two classes, those who sat by hereditary right and those who were nominated by the crown for life. By the constitutional amendment of July 24, 1885, hereditary peerages were put in the way of gradual abolition and it was stipulated that when they should have been extinguished the chamber should be composed of princes of the royal blood, the archbishops and bishops of Portugal proper, 100 members appointed by the king for life, and 50 members elected every new parliament by the lower chamber. By amendment of September 25, 1895, however, the 50 elective peerages were abolished and the number of royal appointees was reduced to 90. In 1910, therefore, the chamber was made up of (1) princes of the royal blood who had attained the age of twenty-five; (2) surviving peers whose hereditary right antedated 1885, together with their immediate successors; (3) the Patriarch of Lisbon and the archbishops and bishops of the continental territory of the kingdom; and (4) the 90 life peers nominated by the crown. In the nomination of peers the crown was restricted only by the requirement that members must have attained the age of forty and must be able to meet a considerable property qualification.

The House of Deputies, as regulated by the law of August 8, 1901, was composed of 155 members, of whom 148 represented the 26 electoral circles of Portugal, the Azores, and Madeira,[1] and 7 represented the colonies. By amendment of 1885 provision was made for the representation of minorities, and of the 155 members in 1910, 35 sat as minority representatives. This result was attained through an arrangement whereby in circles which elected more than one deputy each elector voted for one or two fewer than the number of seats to be filled. Deputies were chosen by direct election, and in the choice all male citizens twenty-one years of age were entitled to participate, provided they paid taxes aggregating 500 *reis* (about 56 cents) annually or were able to read and write. Convicts, beggars, bankrupts, domestic servants, workingmen permanently employed by the state, and soldiers and sailors below the rank of commissioned officer were disqualified. In point of fact, the prevalence of poverty and of illiteracy operated to confine the franchise within very narrow limits. Peers, naturalized aliens, persons not qualified to vote, and certain employees of the state were ineligible for election, and deputies were required to possess an income of not less than 400 milreis ($425) annually, or to be graduates of a professional, secondary, or higher school. After 1892 no deputies, save those representing the colonies, were paid salaries.

[1] The Azores and Madeira are regarded as integral parts of the nation.

Sessions of the Cortes were required to be opened by the crown on the second day of January of each year. According to the amendment of July 24, 1885, a regular session lasted three months and each Cortes, unless sooner dissolved, lasted three years. The president and vice-president of the House of Peers were appointed by the crown; likewise the corresponding officials of the House of Deputies, from a list of five nominees presented by that body. Each chamber was authorized to choose its own secretaries, to pass upon the qualifications of its members, and to frame its rules of procedure. Except at times when the welfare of the state demanded secrecy, sessions were required to be public. To the lower chamber was committed the initiative in all matters pertaining to taxation, the recruiting of troops, the investigation of the administrative offices, and the consideration of propositions submitted by the executive. Upon it, likewise, was conferred exclusive power to impeach ministers and councillors of state. The right to initiate measures in general was vested in each of the two houses, as well as in the Government. Ministers were privileged to attend legislative sessions and to participate in debate. It was required that the sovereign should give or refuse his approval of every measure within a month after it should have been presented to him.[1]

**704. The Judiciary and Local Government.**—The judicial hierarchy consisted of 193 courts of first instance, one in each of an equal number of *comarcas*, or districts; three courts of appeal, sitting at Lisbon, Oporto, and Ponta Delgada (in the Azores); and a Supreme Court at Lisbon. Judges were appointed by the crown, and were irremovable save in consequence of judicial sentence. In the trial of criminal cases the English jury system was in vogue, although it operated but indifferently. The functions of the Supreme Court were those of hearing appeals from the inferior tribunals, trying cases involving judges of the appellate courts and members of the diplomatic corps, and deciding conflicts of jurisdiction.[2]

Early in the nineteenth century continental Portugal was divided for administrative purposes into six provinces, delimited in a large measure in accordance with the physical configuration of the country. In 1836 the province ceased to be an administrative unit and, after a period of readjustment, there was established by law of March 18, 1842, an administrative hierarchy which in its more important aspects has survived to the present day. Under that measure the realm was divided into 21 districts (17 continental and 4 insular), 292 *concelhos*, or communes (263 continental and 29 insular), and 3,960 *freguezias*, or

[1] Arts. 45–62. Dodd, Modern Constitutions, II., 156–159.
[2] Arts. 118–131. Ibid., II., 169–171.

parishes (3,788 continental and 172 insular). Until 1910 the government of the district was vested in a commission consisting of two members appointed by the central authorities and three elected triennially by delegates from the communal councils. Of the two centrally appointed members, one, the governor, presided over the commission; the other was an administrative auditor. Among the functions of the commission was that of sitting as an administrative court. The commune was governed by a mayor, appointed by the central authorities on nomination of the governor of the district, and a council of five to fifteen members elected on a single ticket by the communal voters. The council was presided over, not by the mayor, but by one of its own members. The governing agencies of the parish were an elected council (*junta de parochia*), presided over by the parish priest, and the *regidor*, named by the district governor to represent the interests of the central government. Throughout the entire system the preponderating fact was the thoroughgoing centralization which, through the governors, mayors, and *regadores*, the authorities at Lisbon were able to maintain.

## III. The Revolution of 1910

**705. Political Unsettlement, 1908–1910.**—The period of two and a half years which elapsed between the accession of Manoel II., in February, 1908, and his deposition, in October, 1910, was one of continued political stress. The sovereign was youthful, inexperienced, and lacking in political training. His advisers were divided in their counsels and impelled largely by selfish motives, and in the teeth of rapidly spreading republican and socialist propaganda the old dynastic parties kept up unremittingly their unseemly recriminations. In February, 1909, the king called into consultation the leaders of the various monarchist groups and sought to impress upon them the necessity of co-operation, and when the Cortes was convened, March 1, the Speech from the Throne announced optimistically a programme of constructive legislation, embracing, among other things, the enactment of more liberal press laws, a reform of primary education, and a readjustment of taxation. Within the Cortes, however, it was found impossible to carry any one of the measures proposed and, March 29, the Henriquez ministry, after only three months in office, resigned. During the remainder of the year three successive ministries were set up: that of General Sebastiano Telles, which lasted only from April 11 until May 4; that of Wencelao de Lima, extending from May 4 to December 21; and that of Beirao, which continued from December 21 to early June of the following year. The De Lima cabinet was formed

from elements which stood largely outside the swirl of party politics, but the Republican and Regenerador opposition was so intense that nothing could be accomplished by it. The Beirao government by which it was succeeded was composed entirely of Progressives. The Speech from the Throne at the convening of the Cortes, January 2, 1910, ignored completely the grim realities of the political situation. Ostensibly to afford the Beirao ministry an opportunity to formulate a programme, the session was adjourned until March 3, at which time the members reassembled, only to be sent back again to their homes until June 1. At the second reassembling the ministry was opposed with such virulence that it at once retired and, after some delay, the Regeneradors came into power under Teixeira de Sousa. The Cortes was dissolved and a national election, accompanied by grave disorders, was held, August 28. At the election the Regeneradors obtained 80 seats, the Progressives 43, the Republicans 14 (twice as many as they had ever obtained before), and the Independents 2.[1] The new Cortes assembled September 23; but two days later it was adjourned until December 12, and, in point of fact, it never sat again.

**706. Overthrow of the Monarchy.**—During many months a plot had been ripening in Republican circles looking toward the deposition of the king, the overthrow of the monarchy, and the proclamation of a republic. By reason of the confusion and repression which prevailed perennially in Portuguese politics, the actual strength, numerically and otherwise, of republicanism in the kingdom in 1910 cannot be known. But it is sufficiently clear that the propaganda of the past thirty years had borne much fruit and that among the artisan, trader, and small burgher classes, and especially in the ranks of the army and the navy, the enemies of the monarchy had come to be numerous and influential. The leaders of the republican movement represented, on the whole, the best educated and most progressive elements of the country—largely lawyers, physicians, journalists and other men of the professions and of business. In the later summer of 1910 various intimations of a far-reaching revolutionary plot were received by the Government and the date (September 14) which was at one time fixed for the insurrection proved an impracticable one because the authorities became aware of the project and subverted the republican plans by ordering the warships on that day to quit the Tagus. Within official circles it was generally assumed that the revolutionists, balked once, would return to the project. The crash came, however, at a

[1] Ten of the fourteen Republican deputies were elected in Lisbon. The popular vote in that city was: Republicans, 15,104; Monarchists of all parties, 9,108. In 1908 the numbers were 13,074 and 10,982 respectively.

moment when the Government was entirely off its guard, and its effects were unexpectedly summary. The immediate incident by which it was precipitated was the assassination in Lisbon, October 3, of a distinguished Republican member of the Cortes, Dr. Miguel Bombarda. Whether justly or not, the assassination was interpreted by the populace as a political crime, and to the disaffected elements of the army and navy the occasion seemed ripe for the execution of the contemplated *coup*. October 4 open revolt broke out among the national troops, and during the ensuing forty-eight hours a handful of soldiers and sailors, aided by armed civilians, acquired the mastery of the capital, put the king to flight, won over the country to their cause, and proclaimed the establishment of a republican form of government. The revolutionists were organized, the royalists were not, and the defeat of the latter was complete. It was also substantially bloodless. King Manoel, and the queen-mother Amelia, contriving an escape from the royal palace, made their way to Eraceira, and thence to Gibraltar. Subsequently they were conveyed to England.

**707. Measures of the Provisional Government.**—Meanwhile, October 5, there was established at Lisbon a provisional government composed of nine ministers and presided over by the scholar and literatteur, Theophile Braga. The members of this government were drawn principally from the group of Republican deputies representing the Lisbon constituencies. A few had held high office under the monarchy, but most of them, including Braga, were men of little or no experience in administrative work. The flight of the king and the collapse of the monarchist cause cleared the way for a speedy establishment of the new order, and without awaiting a formal remodelling of the constitution, the Braga government proceeded to carry into execution a number of features of the Republican programme. October 7 it promised amnesty to political and press exiles, the revocation of various illiberal press and judicial laws, the suppression of summary magisterial powers, and a long list of other administrative and judicial reforms. October 18 it abolished the monarchy and proscribed forever the royal house of Braganza. On the same day it abolished likewise the Council of State and the House of Peers, together with all hereditary titles and privileges. In the course of further measures of reform relating to public finance, agriculture, education, religion, and social welfare, it issued a new electoral law and effected arrangements for the convening of a national assembly to which should be committed the task of framing a republican constitution. The electoral decree of March 15, 1911, conferred the franchise upon all Portuguese citizens of the age of twenty-one who under the monarchy were entitled to its

exercise, and upon all, in addition, who were able to read and write, barring soldiers, bankrupts, and ex-convicts. The two cities, Lisbon, and Oporto, were created electoral districts in each of which eight members were to be chosen by *scrutin de liste* after the Belgian, or d'Hondt, plan of proportional representation, and the remainder of the country (including the colonies) was divided into districts in each of which four members were to be chosen, also with provision for the representation of minorities.

**708. The Constitution Framed and the Government Organized.**—The elections to the Constituent Assembly took place May 28, 1911. There were no monarchist candidates and, there having been neither time nor occasion for the appearance of serious differences among the Republicans, the event was attended by little excitement and by no disorder. In many districts the candidates approved by the Provisional Government were unopposed. The Assembly was convened June 19. By unanimous vote of its 192 members the decree by which the monarchy had been abolished and the Braganza dynasty banished was enacted into law, whereupon the body addressed itself to the framing of a budget and the adoption of organic laws relating to the nature and manner of exercise of the political powers of the republic. A draft of the constitution, framed by the Republican leaders, was read to the delegates July 3, and August 18 it was voted, amid general acclamations, almost without modification. The presidential election was fixed for August 23. Of the two principal candidates, Dr. Manoel Arriaga represented the more moderate wing of the Republican element, Dr. Machado Santos (the provisional president) the more radical. Dr. Arriaga was elected by a vote of 121 to 86. August 24 the Assembly terminated its proceedings and the new constitution was put in operation. The first cabinet, presided over by João Chagas, was announced at the beginning of September. It was at this point that France, Spain, and a number of other European powers for the first time recognized officially the republic's existence. The difficulties encountered by the new régime—royalist invasions, outbreaks of disaffection, strikes, lack of funds—were numerous. Not the least serious was the inevitable rise of differences among the Republicans themselves. During the autumn of 1911 the Moderates split into two rival groups, and the more important of them, led by Dr. Almeida, definitely withdrew its support from the Government. The result was a ministerial crisis, and November 7 the Chagas cabinet resigned. The new "ministry of concentration" formed by the radical Vasconcellos was composed of eight members divided almost equally between the Moderates and the Democrats. In more recent days the lines of

party cleavage have tended to be accentuated and the stability, if not the existence, of the republic to be increasingly menaced. In June, 1912, a new ministry was constituted under Leite, in which all of the groups in the lower chamber were represented. There is reason to apprehend that, in the event of the survival of the republic, the outcome will be at best but the resuscitation, under other names and forms, of the long-endured rotativist régime.

## IV. The Constitution of 1911

**709. Constitutional Guarantees: Amendment.**— Aside from five articles of a temporary nature, the constitution of 1911 is arranged in eighty-two articles, grouped in seven "titles" or divisions. The two divisions of principal length are those which relate to the rights and liberties of the individual and the organs and exercise of sovereign power. The guarantees extended the individual comprise a bill of rights hardly paralleled in comprehensiveness among the constitutions of European nations. To Portuguese citizens and to aliens resident in the country are pledged full liberty of conscience, freedom of speech, freedom of the press, liberty of association, inviolability of domicile and of property, the privilege of the writ of habeas corpus, privacy of correspondence, and freedom of employment and of trade save only when restriction is required for the public good. Law is declared to be uniform for all and no public privilege may be enjoyed by reason of birth or title. No one may be required to pay a tax which has not been levied by the legislative chambers or by an administrative authority specifically qualified by law, and, save in case of enumerated offenses of serious import, no one may be imprisoned except upon accusation according to the forms of law. No one may be compelled to perform an act, or to refrain from the performance of an act, except by warrant of law.

The constitution is subject to amendment under regulations of a somewhat curious character. Revision of the fundamental law may be undertaken normally by Congress at the end of every decennial period, the Congress whose mandate coincides with the period of revision being endowed automatically with constituent powers and the process of revision differing in no respect from that of ordinary legislation. At the end of a five-year period from the date of promulgation, however, amendment may be undertaken, providing two-thirds of the members of the chambers sitting jointly vote favorably. Under all circumstances amendments must be specific rather than general, and in no case may an amendment be received or debated which has for its object the abolition of the republican form of government.

**710. The President and the Ministry.**—Sovereignty is lodged in the nation, and the organs of the sovereign will are the independent but supposedly harmonious executive, legislative, and judicial authorities. The powers of the executive are exercised by the President and the ministers. The President is chosen by the two houses of Congress assembled in joint session sixty days prior to the expiration of the presidential term. Voting is by secret ballot and a two-thirds majority is required for election, although in default of such a majority choice is made on the third ballot by simple plurality between the two candidates receiving the largest number of votes. If the office falls vacant unexpectedly the chambers choose in the same manner a president to complete the unexpired term. The term is four years, and after retiring from office an ex-president may not be re-elected for a full term prior to the lapse of four more years. Only native Portuguese citizens at least thirty-five years of age are eligible. Without the permission of Congress the President may not absent himself from the national territory, and he may be removed from office by the vote of two-thirds of the members of the chambers sitting jointly. The duties of the President are, among other things, to negotiate treaties and to represent the nation in its external relations generally, to appoint and dismiss the ministers and public officials, to summon the Congress in extraordinary session, to promulgate the laws of Congress, together with the instructions and regulations necessary for their enforcement, and to remit and commute penalties. If two-thirds of the members of the chambers so request, projected treaties of alliance must be laid before Congress, and the appointment and suspension of public officials may be effected only on proposal of the ministers. Every act of the President must be countersigned by at least one minister, and every minister is responsible politically and legally for all acts which he countersigns or executes. One member of the ministerial group, designated by the President, exercises the functions of premier. Ministers may be members of Congress, and in any case they are privileged to appear in the chambers to defend their acts. Among offenses for which ministers may be held to account in the ordinary tribunals the constitution specifies all acts which tend to subvert the independence of the nation, the inviolability of the constitution and of the republican form of government, the political and legal rights of the individual, the internal peace of the country, or the probity of administrative procedure. The penalty imposed for guilt in respect to any of these offenses is removal from office and disqualification to hold office thereafter.[1]

[1] Provisions relating to the executive are contained in Arts. 36–55.

**711. Congress.**—The exercise of legislative power is vested exclusively in Congress. There are two houses, the Council of Municipalities, or senate, and the National Council, or chamber of deputies. The members of both are chosen by direct vote of the people. Senators are elected for six years, one-half of the body retiring triennially. Each district returns three members, but to assure the representation of minorities electors are permitted to vote for but two. Members of the Chamber of Deputies are chosen for three years. Senators must be at least thirty-five years of age and deputies twenty-five. Congress is required to meet in regular session each year on the second day of December. The period of a session is four months, and a prorogation or an adjournment may be ordered only by the chambers themselves. Extraordinary sessions may be convoked by one-fourth of the members or by the President. Each chamber is authorized to judge the qualifications of its members, to choose its president and other officers, and to fix its rules of procedure. The presiding official at joint sessions is the elder of the two presidents. Members are accorded the usual privileges of speech and immunities from judicial process, and they are guaranteed compensation at rates to be regulated by law.

The functions and powers of the chambers are enumerated in much detail. Most important among them is the enactment, interpretation, suspension, and abrogation of all laws of the republic. Still more comprehensive is the power to supervise the operation of the constitution and of the laws and "to promote the general welfare of the nation." More specifically, the chambers are authorized to levy taxes, vote expenditures, contract loans, provide for the national defense, create public offices, fix salaries, regulate tariffs, coin money, establish standards of weights and measures, emit bills of credit, organize the judiciary, control the administration of national property, approve regulations devised for the enforcement of the laws, and elect the President of the republic. To the Chamber of Deputies is accorded the right to initiate all measures relating to taxes, the organization of the forces on land and on sea, the revision of the constitution, the prorogation or adjournment of legislative sessions, the discussion of proposals made by the President, and the bringing of actions against members of the executive department. Initiative in respect to all other matters may be taken by any member of either branch of Congress or by the President of the republic. A measure which is adopted by a majority vote in each of the two houses is transmitted to the President to be promulgated as law. The President possesses not a shred of veto power. He is required to promulgate within fifteen days any measure duly enacted; if he fails to do so, the measure takes effect none the less. When the chambers fall into disagree-

ment regarding proposed changes in a bill, or when one chamber rejects a bill outright, the subject is debated and a decision is reached in joint session.

**712. The Judiciary and Local Government.**—The organs of judicial administration comprise courts of first instance, courts of appeal, and a supreme tribunal sitting at the capital. Judges are appointed for life, but may be removed from office in accordance with procedure to be established by law. The employment of the jury is optional with the parties in civil cases but obligatory in all criminal cases of serious import. With respect to local government the constitution goes no further than to lay down certain general principles and to enjoin that the actual working arrangements be regulated by subsequent legislation. Among the principles enumerated are the immunity of the local authorities from intervention on the part of the central executive power, the revision of the acts of the public officials in administrative tribunals, the fiscal independence of the local governmental units, and, finally, the employment for local purposes of both proportional representation and the referendum.[1]

[1] A French translation of the Portuguese constitution of 1911 will be found in *Revue du Droit Public*, Oct.–Dec., 1911. Various aspects of the revolution of 1910 and of subsequent developments are discussed in E. J. Dillon, Republican Portugal, in *Contemporary Review*, Nov., 1910; R. Recouly, La république en Portugal, in *Revue Politique et Parlementaire*, Nov. 10, 1910; W. Archer, The Portuguese Republic, in *Fortnightly Review*, Feb., 1911; and A. Marvaud, Les débuts de la république portugaise, in *Annales des Sciences Politiques*, March–April and May–June, 1911. The subject is covered briefly in V. de B. Cunha, Eight Centuries of Portuguese Monarchy (London, 1911), and A. Marvaud, Le Portugal et ses colonies; étude politique et économique (Paris, 1912).

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